

Supreme Court of the United States

OCTOBER TERM, 1965

No. 657

JAMES BROOKHART, PETITIONER

vs.

OHIO

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF OHIO

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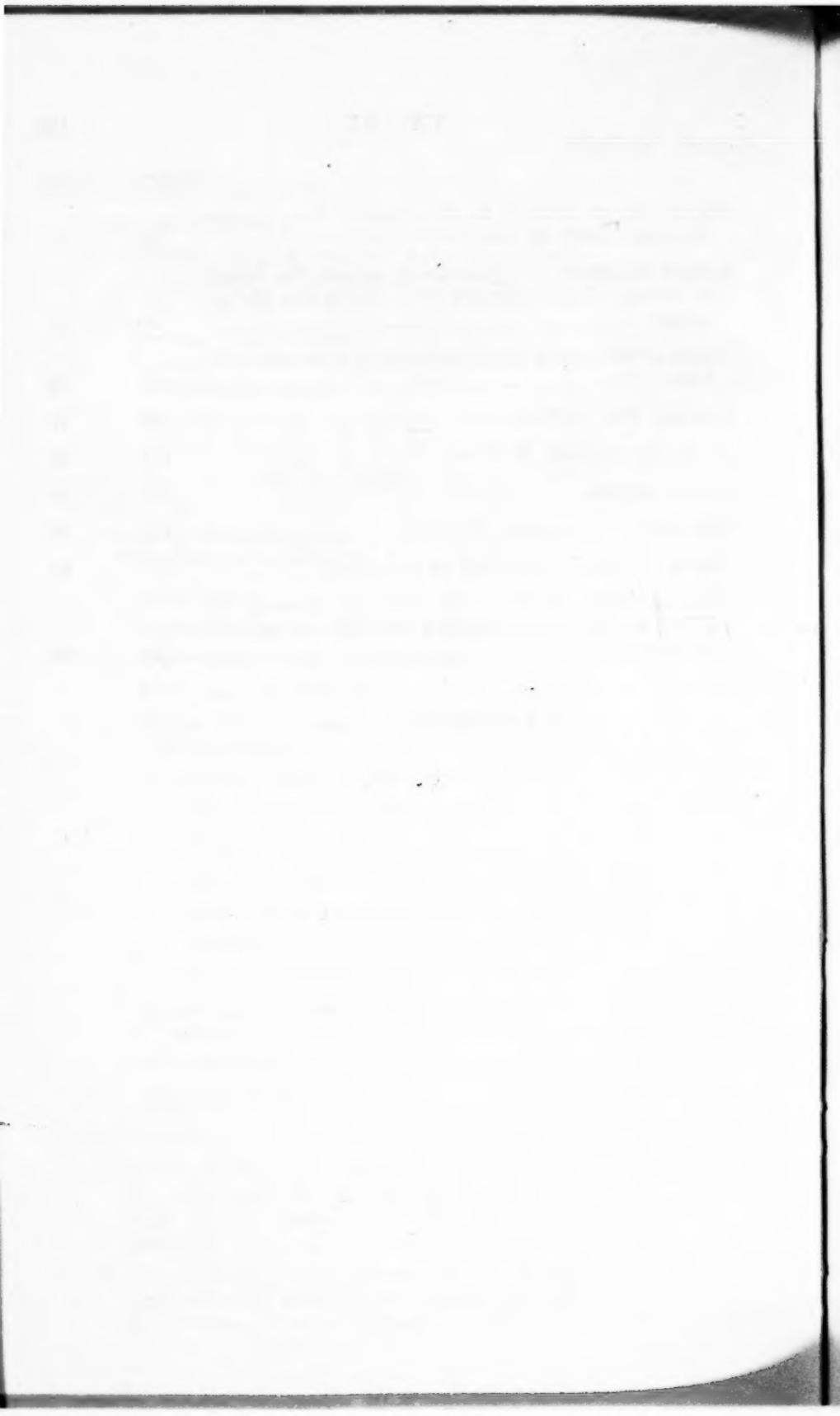
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[fol. A] * * *

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Affidavit (omitted in printing)]

[fol. C]

IN THE SUPREME COURT OF OHIO

Case No. 39132

JAMES BROOKHART, 114-615, PETITIONER, PRO SE

vs

E. B. HASKINS, SUPERINTENDENT

LONDON CORRECTIONAL INSTITUTION ET AL. RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS—filed
September 23, 1964

Addressing the Honorable Kingsley A. Taft, Chief
Justice of said SUPREME COURT OF OHIO

Now comes James Brookhart, herein after known as the Petitioner, now being confined in London Correctional Institution, Madison County, London, Ohio, by the above named respondent in direct violation of the Constitution of the United States, and in contravention of the Constitution of the Great State of Ohio.

Petitioner, contends that he has been deprived of his inalienable rights guaranteed him under the Fifth, Sixth, and Fourteenth Amendments of the Constitution of The United States, by the Grand Jury, Due Process and Equal Protection clauses thereof.

Having set forth the more general outline, Petitioner here and now makes formal application that the Honorable Court order his presence at the hearing of this action so that he, the petitioner, may present oral argument and

evidence in the support of his allegation of unlawful imprisonment.

In conclusion, petitioner predicates a prayer to the above Court for an order under its seal directing the respondent E. B. Haskins as Superintendent of London Correctional Institution to produce the body of the petitioner before the Court, at a time and place specified by the Court, and there to show just cause if any why your petitioner should not be forthwith released from the imprisonment, he here contends is unlawful.

[fol. D] In a petition for a Habeas Corpus alleging unlawful restraint of liberty, without stating facts and reasons why such restraint was unlawful, is sufficient.

STATE v. MULLANEY 8 NP 165, 11D 120.

A petition for a Writ of Habeas Corpus which states: (1) The petitioner is imprisoned or restrained of his liberty; (2) That he is in the custody of E. B. Haskins, Superintendent of London Correctional Institution; (3) The place where he is held; (4) That the detention is illegal and which is signed and verified, states a good cause of action under the provisions of R.C. section 2725.04.

HUTCHIONS v. ALVIS 77 OLA 608, 151 NE (2d) 31.

Original jurisdiction is conferred upon this Honorable Court by Article 4 Section 2 of the Ohio Constitution and by authority of Section 2725.02 of the Revised Code of Ohio. Therefore this petitioner prays that this Honorable Court will accept its jurisdiction and proceed to adjudication according to law.

Respectfully Submitted

/s/ James Brookhart
JAMES BROOKHART
Box 69
London, Ohio

Madison County)
) SS
State of Ohio)

I James Brookhart, Petitioner, Pro. Per., in the foregoing Petition for a Writ of Habeas Corpus, after first being cautioned and sworn, say that the allegations made the statements contained in said Petition are true.

/s/ James Brookhart
JAMES BROOKHART 114-615

Sworn and subscribed before me this 11 day of September 1964

/s/ Donald M. Weiss
Notary Public

DONALD M. WEISS
NOTARY PUBLIC
MY COMMISSION
EXPIRES 7 MAY 1967

[SEAL]

[fol. E]

[Proof of Service (omitted in printing)]

[fol. F] * * *

[fol. G]

IN THE SUPREME COURT OF OHIO

No. 39,132

JAMES EDWARD BROOKHART, PETITIONER

*vs*E. B. HASKINS, Supt. London Correctional Institution
RESPONDENT

RETURN TO WRIT—filed October 13, 1964

Respondent denies each and every allegation in this cause except such allegations as are hereinafter admitted to be true either in this Return or the exhibits attached hereto.

Respondent says that as Superintendent of the London Correctional Institution he has the Petitioner, James Edward Brookhart, in his custody by virtue of a certain mittimus issued by the Court of Common Pleas of Stark County, Ohio, pursuant to his conviction for the crimes of forgery, uttering and publishing forged instruments, breaking and entering in the night season and grand larceny.

Copies of the indictments, journal entries appointing counsel, journal entries of sentence and certified copies of sentences are hereto attached and made a part of this Return.

E. B. HASKINS, Supt.
London Correctional Inst.

WILLIAM B. SAXBE
Attorney General

WILLIAM C. BAIRD
Assistant Attorney General
Attorneys for Respondent

[fol. H]

EXHIBIT TO RETURN

Case No. 18139 SECRET INDICTMENT R. C. 2913.01
INDICTMENT FOR FORGERY, 4 counts, AND UTTERING &
PUBLISHING, 4 counts

FELONY 114615

THE STATE OF OHIO, STARK COUNTY, ss.

In the Court of Common Pleas, Stark County, Ohio, of
the Term of January in the year of our Lord one thousand
nine hundred and Sixty-one.

The Jurors of the Grand Jury of the County of Stark
and State of Ohio, then and there duly impaneled, sworn
and charged to inquire of and present all offenses what-
ever committed within the limits of said County, on their
said oaths, in the name and by the authority of the State
of Ohio, do find and present:

That RONALD K. MITCHELL AND JAMES L.
BROOKHART and DORIS MAE JONES aka Doris Mae
Brookhart late of said County on or about the 8th day of
October in the year of our Lord one thousand nine hun-
dred and sixty, at the County of Stark, aforesaid did,
with intent to defraud, falsely make, forge or counter-
feit a certain check, which said false, forged or counter-
feited check is of the purport and value, to-wit:

56-215
412

BEACON BOXES INC. Number 361
Massillon, Ohio October 8, 1960

Pay to the order of Jimmy Cox \$57.58

THE SUM OF 57 DOLS 58 CTS Dollars

THE STATE BANK COMPANY R. J. Buchannon Treasurer
Massillon, Ohio

SECOND COUNT

And the jurors aforesaid, by their oaths aforesaid, and by
virtue of the authority aforesaid, do further find and

present that RONALD K. MITCHELL and JAMES L. BROOKHART and DORIS MAE JONES aka Doris Mae Brookhart, late of said County on or about the 8th day of October in the year of our Lord one thousand nine hundred and sixty, at the County of Stark aforesaid, did, with intent to defraud, utter or publish as true and genuine a [fol. I] certain false, forged or counterfeited check which said false, forged or counterfeited check, as appears in the first count of this indictment, they, the said Ronald K. Mitchell, and James L. Brookhart and Doris Mae Jones aka Doris Mae Brookhart, then and there at the time they so uttered or published said false, forged or counterfeited check, well knowing the same to be false, forged or counterfeited.

THIRD COUNT

And the jurors aforesaid, by their oaths aforesaid, and by virtue of the authority aforesaid, do further find and present that RONALD K. MITCHELL and JAMES L. BROOKHART and DORIS MAE JONES aka DORIS MAE BROOKHART, late of said County on or about the 8th day of October in the year of our Lord one thousand nine hundred and sixty, at the County of Stark aforesaid, did, with intent to defraud, falsely make, forge or counterfeit a certain check, which said false, forged or counterfeited check is of the purport and value, to-wit:

56-215
412

BEACON BOXES INC.
Massillon, Ohio

Number 367
Oct. 8, 1960

Pay to the Order of Jimmy Cox \$57.82

THE STATE BANK COMPANY Massillon, Ohio **BEACON BOXES INC.**
R.J. Buchannon TREASURER

FOURTH COUNT

And the jurors aforesaid, by their oaths aforesaid, and by virtue of the authority aforesaid, do further find and present that RONALD K. MITCHELL AND JAMES L. BROOKHART and DORIS MAE JONES aka DORIS MAE BROOKHART, late of said County on or about the

8th day of October in the year of our Lord one thousand nine hundred and sixty, at the County of Stark aforesaid, did, with intent to defraud, utter or publish as true and genuine a certain false, forged or counterfeited check which said false, forged or counterfeited check, as appears in the third count of this indictment, they the said Ronald K. Mitchell and James L. Brookhart and Doris Mae Jones aka Doris Mae Brookhart, then and there at the time they so uttered or published said false, forged or counterfeited check, well knowing the same to be false, forged or counterfeited.

FIFTH COUNT

And the jurors aforesaid, by their oaths aforesaid, and by virtue of the authority aforesaid, do further find and present that Ronald K. Mitchell and James L. Brookhart and Doris Mae Jones aka Doris Mae Brookhart, late of said County on or about the 8th day of October in the year of our Lord one thousand nine hundred and sixty, at the County of Stark aforesaid, did, with intent to defraud, falsely make, forge or counterfeit a certain check, which said false, forged or counterfeited check is the pur-[fol. J] port and value, to-wit:

56-215
412

BEACON BOXES INC. Massillon, Ohio	Number 374 Oct. 8, 1960	
Pay to the order of	Jimmy Cox	\$72.63
THE SUM OF 57 DOLS 82 CTS	Dollars	
THE STATE BANK COMPANY MASSILLION, OHIO	BEACON BOXES INC. R. J. Buchannon Treasurer	

SIXTH COUNT

And the jurors aforesaid, by their oaths aforesaid, and by virtue of the authority aforesaid, do further find and present that RONALD K. MITCHELL and JAMES L. BROOKHART and DORIS MAE JONES AKA Doris Mae Brookhart, late of said County on or about the 8th day of October in the year of our Lord one thousand nine hundred and sixty, at the County of Stark aforesaid, did with intent to defraud, utter or publish as true and gen-

uine a certain false forged or counterfeited check which said false, forged or counterfeited check, as appears in the fifth count of this indictment, they the said Ronald K. Mitchell and James L. Brookhart and Doris Mae Jones aka Doris Mae Brookhart, then and there at the time they so uttered or published said false, forged or counterfeited check, well knowing the same to be false, forged or counterfeited.

SEVENTH COUNT

And the jurors aforesaid, by their oaths aforesaid, and by virtue of the authority aforesaid, do further find and present that RONALD K. MITCHELL and JAMES L. BROOKHART and DORIE MAE JONES aka Doris Mae Brookhart, late of said County on or about the 8th day of October in the year of our Lord one thousand nine and sixty, at the County of Stark aforesaid, did, with intent to defraud, falsely make, forge or counterfeit a certain check, which said false, forged or counterfeited check is of the purport and value, to-wit:

56-215
412

BEACON BOXES INC. Massillon, Ohio	Number 364 Oct. 8, 1960	
Pay to the order of	Jimmy Cox	\$57.82
THE SUM OF 57 DOLS 82 CTS	Dollars	
THE STATE BANK COMPANY Massillon, Ohio	BEACAN BOXES INC. R. J. Buchannon Treasurer	

EIGHTH COUNT

And the jurors aforesaid, by their oaths aforesaid, and by virtue of the authority aforesaid, do further find and present that RONALD K. MITCHELL and JAMES L. BROOKHART AND DORIS MAE JONES aka Doris Mae Brookhart, late of said County on or about the 8th day of October in the year of our Lord one thousand nine hundred and sixty, at the County of Stark aforesaid, did, with intent to defraud, utter or publish as true and genuine a certain false, forged or counterfeited check [fol. K] which said false, forged or counterfeited check, as appears in the seventh count of this indictment, they, the

said Ronald K. Mitchell and James L. Brookhart and Doris Mae Jones aka Doris Mae Brookhart, then and there at the time they so uttered or published said false, forged or counterfeited check, well knowing the same to be false, forged or counterfeited contrary to the statute in such cause made and provided, and against the peace and dignity of the State of Ohio.

NORMAN J. PUTMAN,
Prosecuting Attorney
Stark County, Ohio

[fol. L]

SECRET INDICTMENT

No. 18139

January Term, 1961

COURT OF COMMON PLEAS
Stark County, Ohio

THE STATE OF OHIO

v8

RONALD K. MITCHELL AND JAMES L. BROOKHART AND
DORIS MAE JONES aka Doris Mae Brookhart

INDICTMENT FOR FORGERY 4 Counts, and UTTERING &
PUBL. 4 counts

A TRUE BILL
Charles A. Laiblin

Foreman of the Grand Jury

Filed *March 3, 1961*

C. Frank Sherrard
Clerk

NORMAN J. PUTMAN
Prosecuting Attorney

[fol. M]

EXHIBIT TO RETURN

Case No. 18101

R. C. 2907.10, 2907.20

INDICTMENT FOR BREAKING & ENTERING AND GRAND
LARCENY

FELONY

114615

THE STATE OF OHIO, STARK COUNTY, ss.

In the Court of Common Pleas, Stark County, Ohio, of the Term of January in the year of our Lord one thousand nine hundred and sixty-one

The Jurors of the Grand Jury of the County of Stark and State of Ohio, then and there duly impaneled, sworn and charged to inquire of and present all offenses whatever committed within the limits of said County, on their said oaths, in the name and by the authority of the State of Ohio, do find and present:

That RONALD K. MITCHELL and JAMES EDWARD BROOKHART late of said County on or about the 10th day of October in the year of our Lord one thousand nine hundred and Sixty, at the County of Stark, aforesaid did, in the night season, maliciously and forcibly break and enter a certain building, to-wit: Beacon Boxes, Inc., located at 151 Lennox Avenue, S. W., Perry Heights, and owned by R. & S. Enterprises, aka Richard and Samuel Shapiro, with intent to steal property of value

SECOND COUNT

And the jurors aforesaid, by their oaths aforesaid, and by virtue of the authority aforesaid, do further find and present that RONALD K. MITCHELL AND JAMES EDWARD BROOKHART, late of said County on or about the 10th day of October in the year of our Lord one thousand nine hundred and sixty, at the County of Stark [fol. N] aforesaid, did steal a Speedrite check machine, the personal property of Beacon Boxes, Inc., and of the aggregate value of more than Sixty (\$60.00) Dollars con-

trary to the statute in such cause made and provided,
and against the peace and dignity of the State of Ohio.

**NORMAN J. PUTMAN
Prosecuting Attorney
Stark County, Ohio**

[fol. O]

No. 18101
January Term, 1961

COURT OF COMMON PLEAS,
Stark County, Ohio
THE STATE OF OHIO

vs

RONALD K. MITCHELL and JAMES EDWARD BROOKHART
INDICTMENT FOR B & E AND GRAND LARCENY

A TRUE BILL
Charles A. Laiblin
Foreman of the Grand Jury

Filed *March 3, 1961*
Clerk

Norman J. Putman
Prosecuting Attorney

[fol. P]

EXHIBIT TO RETURN

FILED: Feb. 1, 1962
C. Frank Sherrard
Clerk of Courts
Stark County, Ohio

114615

IN THE COURT OF COMMON PLEAS

CASE NO. 18139

THE STATE OF OHIO, PLAINTIFF

218

JAMES E. BROOKHART, DEFENDANT

STATE OF OHIO :
STARK COUNTY :

JOURNAL ENTRY
COUNSEL APPOINTED

This day the defendant having been served with a copy of the indictment in this cause, appeared in open court, in the custody of the Sheriff, and the said defendant, being then and there without and unable to employ counsel, the Court hereby assigns JOHN ERGAZOS as counsel for said defendant in this cause, pursuant to the provisions of R. C. 2941.50.

PAUL G. WEBER Judge

APPROVED BY:

NORMAN J. PUTMAN
NORMAN J. PUTMAN, Prosecuting Attorney

[fol. Q1]

FILED: Feb. 1, 1962
C. Frank Sherrard
Clerk of Courts
Stark County, Ohio

IN THE COURT OF COMMON PLEAS

CASE NO. 18101

THE STATE OF OHIO, PLAINTIFF,

218

JAMES E. BROOKHART, DEFENDANT

STATE OF OHIO : : SS:
STARK COUNTY :

JOURNAL ENTRY
COUNSEL APPOINTED

This day the defendant having been served with a copy of the indictment in this cause, appeared in open court, in the custody of the Sheriff, and the said defendant, being then and there without and unable to employ counsel, the court hereby assigns JOHN ERGAZOS as counsel for said defendant in this cause, pursuant to the provisions of R. C. 2941.50.

PAUL G. WEBER Judge

APPROVED BY:

NORMAN J. PUTMAN
NORMAN J. PUTMAN, Prosecuting Attorney

[fol. R]

EXHIBIT TO RETURN

IN THE COURT OF COMMON PLEAS

CASE NO. 18139

THE STATE OF OHIO, PLAINTIFF

128

JAMES EDWARD BROOKHART, DEFENDANT

STATE OF OHIO :

28

STARK COUNTY

JOURNAL ENTRY
FINDING OF GUILTY
BY THE COURT AND
SENTENCE IMPOSED

This cause came on for trial by the Court, the defendant having heretofore waived trial by jury, and the Court having heard the evidence and the arguments of counsel finds that the defendant is guilty of forgery on counts, one, three and five, and uttering and publishing on counts, two, four and six, but not guilty of forgery and uttering and publishing on counts seven and eight, as charged in the indictment.

Whereupon the Prosecuting Attorney moved that sentence be pronounced against the defendant. Whereupon the Court was duly informed in the premises on the part of the State of Ohio, by the Prosecuting Attorney, and on the part of the defendant, by the defendant himself, and thereafter the Court asked the defendant whether he has anything to say as to why judgment should not be pronounced against him, and the defendant, after consulting with his attorney, said that he had nothing further to say except that which he had already said, and showing no good and sufficient reason why sentence should not be pronounced, the Court thereupon pronounced sentence.

[fol. S] IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the defendant be committed to the Ohio State Penitentiary in Columbus for an indeterminate term of not less than one (1) nor more than twenty (20) years, or until otherwise pardoned, paroled or released according to law, on each of the three counts of forgery (R. C. 2913.01) as contained in counts one, three and five in the indictment, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant be committed to the Ohio State Penitentiary in Columbus for an indeterminate term of not less than one (1) nor more than twenty (20) years, or until otherwise pardoned, paroled or released according to law on each of the three counts of uttering and publishing (R. C. 2913.01) as contained in counts two, four and six in the indictment, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall serve the sentences in counts one, three and five consecutively, one after the other, and the sentences in counts two, four and six, concurrent and concurrently with the sentence in count one, and concurrently with the sentences in Case No. 18101, all of the aforesaid sentences being imposed by the Court of Common Pleas of Stark County, Ohio, in the January 1962 term and that the defendant pay the costs of this prosecution for which execution is hereby awarded.

/s/ PAUL G. WEBER Judge

APPROVED BY:

NORMAN J. PUTMAN, Prosecuting Attorney

[fol. T]

IN THE COURT OF COMMON PLEAS
CASE NO. 18101

THE STATE OF OHIO, PLAINTIFF

25

JAMES EDWARD BROOKHART, DEFENDANT

STATE OF OHIO : : SS:
STARK COUNTY :

JOURNAL ENTRY
FINDING OF GUILTY
BY THE COURT AND
SENTENCE IMPOSED

This cause came on for trial by the Court, the defendant having heretofore waived trial by jury, and the Court having heard the evidence and the arguments of counsel finds that the defendant is guilty of breaking and entering and grand larceny as charged in the indictment.

Whereupon the Prosecuting Attorney moved that sentence be pronounced against the defendant. Whereupon the Court was duly informed in the premises on the part of the State of Ohio, by the Prosecuting Attorney, and on the part of the defendant, by the defendant himself, and thereafter the Court asked the defendant whether he has anything to say as to why judgment should not be pronounced against him, and the defendant, after consulting with his attorney, said that he had nothing further to say except that which he had already said, and showing no good and sufficient reason why sentence should not be pronounced, the Court thereupon pronounced sentence.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the defendant be committed to the Ohio [fol. U] State Penitentiary in Columbus for an indeterminate term of not less than one (1) nor more than

fifteen (15) years, or until otherwise pardoned, paroled or released according to law, on the charge of breaking and entering (R. C. 2907.10) in the indictment, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant be committed to the Ohio State Penitentiary in Columbus for an indeterminate term of not less than one (1) nor more than seven (7) years, or until otherwise pardoned, paroled or released according to law on the charge of grand larceny (R. C. 2907.20) in the indictment, and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant shall serve the sentences, each above, concurrently each with the other, and the sentences aforesaid shall be served concurrently with the sentences in Case No. 18139, all of the aforesaid sentences being imposed by the Court of Common Pleas of Stark County, Ohio, in the January 1962 term and that the defendant pay the costs of this prosecution for which execution is hereby awarded.

/s/ PAUL G. WEBER Judge

APPROVED BY:

NORMAN J. PUTMAN, Prosecuting Attorney

[fol. V]

EXHIBIT TO RETURN

CERTIFIED COPY OF SENTENCE

At a term of the Court of Common Pleas, begun and held at the Court House in Canton within and for the County of Stark and State of Ohio, on the 26th day of March A. D. 1962.

Present, the Hon, Paul G. Weber Judge

In the Record and Proceedings of said Court, then and there had, among other things, is the following Judgment and Sentence, to-wit:

THE STATE OF OHIO) Indictment for FORGERY, 4
 vs) counts, AND UTTERING &
James Edward Brookhart) PUBLISHING, 4 counts

The said James Edward Brookhart having been found guilty by the Court.

It is therefore the sentence of the Court that he be imprisoned in the

PENITENTIARY

of this State and kept at hard labor (No part of the time to be kept in solitary confinement), and until legally discharged. And that said imprisonment shall be for a period of duration not less than 1 to 20 Years (Forgery, 3 counts, 1, 3, and 5). 1 to 20 Years (Utering & Publishing, 3 counts, 2, 4, and 6) And that he pay the costs of this prosecution, taxed at \$179.65 One Hundred Seventy-nine .65/100 DOLLARS

I CERTIFY the above to be a true copy of said Judgment and Sentence.

Given under my hand and the seal of said Court, this 26th day of March 1962.

C. FRANK SHERRARD
Clerk

By /s/ HELEN SHERMAN
Deputy

[SEAL]

[fol. W]

CERTIFIED COPY OF SENTENCE

114615

At a term of the Court of Common Pleas, begun and held at the Court House in Canton within and for the County of Stark, and State of Ohio, on the 26th day of March, A. D. 1962

Present, the Hon. Paul G. Weber Judge

In the Record and Proceedings of said Court, then and there had, among other things, is the following Judgment and Sentence, to-wit:

THE STATE OF OHIO) Indictment for BREAKING
vs) & ENTERING and GRAND
James Edward Brookhart) LARCENY

The said James Edward Brookhart having been found guilty by the Court.

It is therefore the sentence of the Court that he be imprisoned in the

PENITENTIARY

of this State and kept at hard labor (No part of the time to be kept in solitary confinement), and until legally discharged. And that said imprisonment shall be for a period of duration not less than 1 to 15 Years (Breaking & Entering) and 1 to 7 Years (Grand Larceny).

And that he pay the costs of this prosecution, taxed at \$544.64

I CERTIFY the above to be a true copy of said judgment and Sentence.

Given under my hand and the seal of said Court, this 26th day of March 1962

C. FRANK SHERWARD
Clerk

By /s/ HELEN SHERMAN
Deputy

[fol. X]

[CERTIFICATE OF SERVICE (omitted in printing)]

[fol. Y]

IN THE COURT OF COMMON PLEAS

Stark County, Ohio

No. 18101 & 18139

STATE OF OHIO, PLAINTIFF

vs.

JAMES EDWARD BROOKHART, DEFENDANT

TRANSCRIPT OF PROCEEDINGS—March 23, 1962

Before the Hon. Paul G. Weber, Trial Judge

APPEARANCES:

ON BEHALF OF THE STATE OF OHIO:

Harry N. Kandel, Asst. Pros. Atty.
IRA G. TURPIN, Asst. Pros. Atty.

ON BEHALF OF THE DEFENDANT:

John Ergazos, Esq.,

OFFICIAL SHORTHAND REPORTER:

Elsie F. Pfeifer.

[fol. 1]

10:10 a.m.—FRIDAY—MARCH 23, 1962—
TRIED TO COURT:

THE COURT: There are two indictments, are you going to try them together?

MR. ERGAZOS: Yes, the defendant has signed a waiver of trial by jury and consented to be tried by the court.

THE COURT: Mr. Brookhart, will you come forward.

(Defendant approaches bench)

You have a right to a jury trial, do you understand?

A Yes, sir.

THE COURT: And in this case I understand you signed two waivers of trial by jury?

A Thats correct, Your Honor.

THE COURT: Is that your signature?

A Yes, it is, Your Honor.

COLLOQUY BETWEEN COURT AND COUNSEL

THE COURT: Case #18139?

A Yes, it is, Your Honor.

THE COURT: And on #18101?

A Yes, it is, Your Honor.

THE COURT: Let the record so show, and then let the record show that counsel for the defendant has agreed [fol. 2] to try, for the court to try the indictment #18101 and 18139 in the same trial.

MR. ERGAZOS: Thats correct, Your Honor.

THE COURT: Anything further?

MR. KANDEL: Nothing further.

MR. ERGAZOS: The only thing is, Your Honor, this matter is before the court on a prima facie case.

THE COURT: There being no . . . going to be no cross-examination of the witnesses, so the court will know and the State can't be taken by surprise, the court doesn't want to be fooled and have your client change his mind half way through the trial and really contest it, the State has a contest, we want to know in fairness to them so they can put on complete proof.

MR. ERGAZOS: I might say this, Your Honor, if there is any testimony adduced here this morning which leaves any question as to this defendant in connection [fol.3] with this crime I would like to reserve the right to cross-examine at that time.

THE COURT: That is raising another . . . that is putting the State on the spot and the court on the spot, I won't find him guilty if the evidence is substantial.

MR. ERGAZOS: We have a jury question in the court, undoubtedly there will be . . .

THE COURT: Ordinarily in a prima facie case . . . the prima facie case is where the defendant, not technically or legally, in effect admits his guilt and wants the State to prove it.

MR. ERGAZOS: That is correct.

THE COURT: And the court knowing that and the Prosecutor knowing that, instead of having a half a dozen witness on one point they only have one because they understand there will be no contest.

A I would like to point out in no way am I pleading [fol. 4] guilty to this charge.

THE COURT: If you want to stand trial we will give you a jury trial.

A I have been incarcerated now for the last eighteen months in the county jail.

THE COURT: You don't get credit for that.

A For over two months my nerves have been . . . I couldn't stand it out there any longer, I would like to be tried by this court.

THE COURT: Make up your mind whether you require a prima facie case or a complete trial of it.

MR. ERGAZOS: Prima facie, Your Honor, is all we are interested in.

THE COURT: All right.

MR. KANDEL: We waive the opening statements in this case. If it please the court, defense counsel having waived the necessity of having opening statements in this case I don't feel it is necessary for the State of Ohio. I would indicate the nature of the charge except for the [fol. 5] fact the indictments are on file charging this defendant with 4 counts of forgery, 4 counts of uttering and publishing, 1 count of grand larceny, and one count of breaking and entering, and that the State of Ohio will prove each and every material allegation necessary in those particular cases by witnesses.

THE COURT: There is no question the court will require that.

MR. KANDEL: I would like to call as my first witness Mr. Sam Macioce.

SAM MACIOCE, called to maintain the issue on behalf of the State of Ohio, being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION BY MR. KANDEL:

Q Tell us your name, sir?

A Sam Macioce.

Q Where are you employed?

A Kroger Co., in Massillon.

MR. KANDEL: This will be on #18139.

[fol. 6] THE COURT: Yes, that is the order I want to set up here.

MR. KANDEL:

Q Mr. Macioce, what is your occupation, sir?

A Store manager.

Q Going back to October 8th in the year 1960, I will ask you if you had a check cashed in your store purportedly made out to one Jimmy Cox?

A Yes, sir.

(State's Ex. "A", marked)

Q Showing you State's Ex. "A", will you tell me if you have seen this particular check before, sir?

A Yes, I have and this is the . . .

MR. ERGAZOS: OBJECTING now to any testimony in regard to this check for the reason.

THE COURT: Are you trying the case on the merits or just want the State to make a *prima facie* case?

MR. KANDEL: At this time the State moves to amend the indictment for the simple reason there has been a typographical error in Check #361. I believe [fol. 7] this is what the defense counsel is getting at and I have noticed it myself.

THE COURT: That is a different matter. What is the motion of the Prosecutor?

MR. KANDEL: The question of numbering on these checks. If it please the Court, the indictment shows that each of these checks has the number of 364. When the typing staff wrote up the indictment check #367 . . .

THE COURT: I don't think that even is necessary.

MR. KANDEL: But this is what I was going to move.

THE COURT: The instrument is a forgery, not what it is marked, but if you want to clarify something that may be done.

MR. KANDEL: #374, #361, and the fourth is #364. I would like to amend the indictment to have the numbers correspond which I have given to the court.

MR. ERGAZOS: Is #361 the first count?

[fol. 8] MR. KANDEL: I don't think it makes any difference, it was all done on the same day. They can be taken in any order you desire.

THE COURT: Are all the same amount?

MR. KANDEL: No.

MR. ERGAZOS: That is the reason for the objection.

THE COURT: Lets take one check at a time.

Was this pertaining to the first count?

MR. KANDEL: This is the Beacon Boxes check in the amount of \$57.58.

THE COURT: \$57.58?

MR. KANDEL: Yes, Your Honor, the check is listed here as \$57.82. I would like to amend the indictment to the amount of \$57.58, and make it check #361, in the first count in this indictment.

MR. ERGAZOS: OBJECT to the motion, Your Honor.

THE COURT: You object?

MR. ERGAZOS: That motion for the amendment, to the amendment at this time.

[fol. 9] THE COURT: Let the record show that as far as the law is concerned it doesn't matter what the amount is, or what the number of the check is, it is just a question, whatever the amount of the check, whether it is a forgery or not, and the jury would be so instructed if you had a jury trial, but to clarify this the Court will allow you to amend check #361.

MR. ERGAZOS: Is that on the first count?

MR. KANDEL: \$57.58 on count No. 1.

THE COURT: That is just to clarify it.

MR. KANDEL: Thank you, Your Honor.

Q I will ask you if you cashed this particular check?

A It was either me or my co-manager cashed it.

Q In any event, did it pass through your particular store?

A No, sir, it passed through my store because I cashed it.

Q That is what I am talking about.

A Yes, it did.

[fol. 10] Q Did the check return to your store?

A Yes, it did.

Q I will ask you for what reason was it returned?

A Stolen checks with the name forged on them.

THE COURT: The reason for returning them wouldn't make any difference no matter what the bank called it. You are not sure whether it is forged, was it passed, or wasn't it.

MR. KANDEL:

Q In any event, this check did come back to you and you turned it over to the sheriff's department?

A Yes, sir.

MR. KANDEL: I believe that's all. I have one more question.

Q Was this done on or about the 8th of October 1960?

A Yes, sir, it was a Monday or Tuesday evening.

THE COURT: Where?

A At Krogers.

MR. KANDEL:

Q That is at the Kroger Store in Massillon where you are employed?

A Yes, sir.

[fol. 11] Q That is in Stark County?

A Yes, sir.

THE COURT: What store was that again?

MR. KANDEL: Kroger.

I believe that is all, Your Honor.

THE COURT: You are excused.

MR. KANDEL: If the Court please, I would like to amend the indictment in count No. 3 to show the number of the check to be 367 instead of 364.

MR. ERGAZOS: We OBJECT, Your Honor.

(State's Ex. "B", marked)

THE COURT: Anything else?

MR. KANDEL: That is all that is necessary in this particular one.

THE COURT: The Court, for the purpose of clarity, not as to any material charge. I say that Mr. Ergazos for the reason that the number of the check has nothing to do with a forgery, I believe you will agree.

[fol. 12] MR. KANDEL: If it please the Court, I would like to also have the indictment amended in the count No. 5 and make that check #374.

MR. ERGAZOS: Again OBJECT to the motion.

THE COURT: OVERRULED.

MR. KANDEL: And the amount of the check to \$72.63.

MR. ERGAZOS: Again OBJECT.

THE COURT: \$72.63. OVERRULED. It may be so amended.

MR. KANDEL: If the Court please, I would like to call for my next witness Doris Brookhart, Doris Jones.

DORIS JONES, called to maintain the issue on behalf of the State of Ohio, being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION BY MR. KANDEL:

Q Will you state your name to the court?

A Doris Jones.

Q Where do you live?

[fol. 13] A 1022 - 3rd, S. W.

Q I will ask you if you know a man by the name of James L. Brookhart?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

Q Point him out to the court please?

THE COURT: How is he dressed?

A Hes got a coat on, light blue shirt and dark pants.

THE COURT: Let the record show she identifies the defendant.

MR. KANDEL:

Q Going back to the month of October 1960, I will ask you if you were in the company of Mr. Brookhart and another man during that month?

A Yes, I was.

Q Going back . . . first of all, who was the other man?

A Ronald Mitchell.

Q Do you know where Mr. Mitchell is at the present time?

A Yes, sir.

Q Where is he?

A State Reformatory or Penitentiary.

Q I will ask you if that is based on the charges, to [fol. 14] your knowledge, that were placed against him and Mr. Brookhart?

A Yes, sir, I was in the courtroom the day he was sentenced.

Q Now I will ask you if you did not plead guilty in Case No. 18139 to the charges of forgery and uttering and publishing?

A Yes, sir.

Q Showing you checks . . .

(State's Ex. "C" and "D" marked)

THE COURT: But you also have been known as Doris May Brookhart?

A Yes, sir.

MR. KANDEL:

Q Now did you live with Mr. Brookhart for a period of time?

A Yes, sir.

Q And I will ask you if during that period of time you had conversations with him concerning certain checks?

A I wouldn't say exactly conversations with him, there was talk between him and Mitchell, there was talking between him and Mitchell, not all three of us.

Q What was this conversation about?

[fol. 15] A They were talking about forging checks and cashing them.

Q Did they in their conversations and this talking with you tell you what type of checks, or whose checks they were?

A You mean prior to the time the checks were . . .

Q Yes.

A They had pay roll checks but they didn't say who they would be on.

Q Did you observe anything other than checks? By that I mean any mechanical equipment for writing checks?

A At the time they did it, yes, they put the check portion in the check writing machine.

Q Did you at any time have a conversation with Mr. Brookhart concerning where he obtained this particular item?

A I knew some checks he got from where he stole the checks from.

Q Where was that?

A Beacon Box Company.

Q Did you question Mr. Brookhart and Mr. Mitchell in the presence of each other when they had obtained these, or who got them.

[fol. 16] A I knew when they obtained it, when they come back in they had it.

Q I will ask you if this conversation was held prior to their going out and when they returned with certain items?

A Well, they went out and there was only just a vague conversation about checks. When they came back they had a check writer and checks.

Q I will ask you if this check writer was used later by you and Mr. Mitchell and Mr. Brookhart?

A Yes, sir.

Q What was done with the check writer?

A You mean after we were finished using it? I don't know, they took it out and that's the last I saw it.

Q Did you write any checks?

A Yes, I did.

Q How many?

A I couldn't say how many. I think its around 20.

Q Who signed the name on the checks?

A I did.

Q And who signed the name of the individual supposed to be the officer of the company?

A I did.

[fol. 17] Q Why did you sign it?

A Well . . . you mean why it was me and not the other ones?

Q Yes.

A Because I had better handwriting.

THE COURT: Who was present when you signed these checks?

A Mr. Brookhart, Mr. Mitchell and my daughter.

MR. KANDEL:

Q How old is your daughter?

A My daughter was then six years old.

Q Where did the writing of these checks take place?

A Hilltop Motel on Route 62.

Q After the checks were written what happened to the checks?

A I presume they were cashed, they came back with money.

Q I will ask you if the checks were given to either Mr. Brookhart or Mr. Mitchell?

A They both had them.

Q Did they leave after the checks were written?

A Yes.

Q Did they later return?

A Yes.

[fol. 18] Q After they returned did you observe any cash in the presence of either Mr. Mitchell or Mr. Brookhart?

A Yes, sir.

Q Had they had this amount of money prior to taking the checks and leaving?

A No, sir, not that much.

THE COURT: Was anything said by them pertaining to them in your presence?

A Not pertaining to the cash. I mean they said they had cashed them.

MR. KANDEL:

Q You were not along when they were cashed?

A No, sir.

THE COURT: Do you remember about how many checks there were?

A I am not positive. There were around 20, but I am not positive.

MR. ERGAZOS: I can't hear.

A I think around 20, but there could be more.

MR. KANDEL:

Q Did you obtain any money from these checks?

A Not directly, no.

Q Explain yourself, what do you mean by, not directly, no?

[fol. 19] A There wasn't any directly given to me. We went from there to New York and took a trip and I presume that money paid for it.

Q Who is "we"?

A Mr. Brookhart, Mr. Mitchell and my daughter and me went to New York.

Q Did you go in the same automobile?

A Yes.

Q Whose automobile was it?

A Mr. Brookhart's.

THE COURT: This was after the checks were cashed?

A Yes.

MR. KANDEL:

Q What happened in New York as far as Mr. Mitchell was concerned?

A We left Mr. Mitchell there.

Q Did you continue on your trip with Mr. Brookhart?

A Yes, sir.

Q Was your daughter along?

A Yes, sir.

Q Where did you go?

A We went to Washington, D. C., and then to Miami, Florida.

[fol. 20] Q You went to Washington, D. C., and then to Miami, Florida. How long did you remain in Miami, Florida?

A About 6 months

Q Did you remain all that time with Mr. Brookhart?

A No, sir.

Q What happened?

A Well, I left him. The last day was October 30th.

Q And I believe later you were extradited back to the State of Ohio?

A Yes, sir.

Q And then you entered a plea of guilty on these charges, is that right?

A Yes, sir.

THE COURT: I believe your plea of guilty was before this court?

A Yes, sir.

THE COURT: Did this court or the prosecutor or anybody promise you any leniency or any benefits of any kind?

A No, sir.

MR. KANDEL:

Q I want to show you State's Ex. "A", check #361, do you recognize the handwriting on that check?

[fol. 21] A On top? Yes,

Q Turning it over, do you recognize the handwriting purportedly of Jimmie Cox?

A Yes, sir.

Q And whose is that?

A Mr. Brookhart.

Q Mr. Brookhart. Will you take a look at State's Ex. "D". Have you ever seen that before?

A Yes, sir.

Q I will ask you if you wrote that check?

A Yes, sir.

Q And will you look at the back of that?

THE COURT: Before you answer that . . . which was the one you just asked her about?

MR. KANDEL: #361.

THE COURT: 361.

MR. KANDEL Yes, Your honor.

THE COURT: The next one, the one she has now is 374 . . . no.

MR. KANDEL: This one, if the Court please, is 367.

THE COURT: Yes, 367. All right, she may answer.

[fol. 22] MR. KANDEL:

Q Do you recognize the writing on the back?

A It looks like Mr. Brookhart's.

Q Showing you State's Ex. "C", check No. 374, I will ask you if you wrote that particular check?

MR. ERGAZOS: OBJECT.

THE COURT: This is which one now?

MR. KANDEL: 374.

MR. ERGAZOS: OBJECT, Your Honor, to the reference here now, because for the reason that the indictment fails to show the name of any payee on the check, on that particular check.

THE COURT: The checks . . . you called the check 374, you ought to use the number of the exhibit.

MR. KANDEL: I have, Your Honor, State's Ex. "C", which was check 374.

THE COURT: What was your objection?

MR. ERGAZOS: My objection was as to any reference to this particular exhibit for the reason the indictment fails to show any . . . the name of any payee whatsoever.

[fol. 23] MR. KANDEL: The indictment fails to show that?

MR. ERGAZOS: That's right.

MR. KANDEL: The check number has been amended, I have the check here, it's here before the court.

THE COURT: How do you mean, probably I got it wrong. The first one she testified to is 361.

MR. KANDEL: Yes, Your Honor, the first she testified was 361.

THE COURT: That is exhibit . . .

MR. KANDEL: "A".

THE COURT: Exhibit "A" was, that is the first one she testified to.

MR. KANDEL: All right.

THE COURT: The second one is exhibit . . .

MR. KANDEL: 307, Exhibit "B", which is counts three and four, on count No. 5 is 374.

THE COURT: That is Exhibit "C".

MR. KANDEL: And he is saying on the . . . his particular copy of the indictment does not have the name [fol. 24] of the payee. However, on the original indictment it shows the payee.

MR. ERGAZOS: Let the record indicate an OBJECTION to this reference because of the fact not being on the copy served upon the defendant, Your Honor. That was completely blank.

THE COURT: Let the record show the original indictment in court presently shows the name of the payee as Jimmie Cox.

MR. KANDEL:

Q Let me ask you, do you know anyone who used the name of Jimmie Cox?

A Yes, sir, I know a boy by that name.

MR. ERGAZOS: Your Honor, a further OBJECTION now because of that particular one being made out to James Brookhart is . . . again is a variance with the indictment, with the original, although the copy did not show any payee whatsoever.

THE COURT: Whoever made this up certainly made [fol. 25] some blunders, the court can emphatically say they are not material and can't be amended. In all cases whether a matter of forgery, the instrument was forgery, the description incidentally . . . but the description should be corrected . . . at least explained for identification purposes. Now, this is the exhibit . . .

MR. KANDEL: "C", Your Honor.

THE COURT: That is the fifth count?

MR. KANDEL: Yes, Your Honor.

THE COURT: Now comes this question of identification.

MR. KANDEL: If the Court please, may I question my witness a little farther concerning the use of the name?

THE COURT: Yes.

MR. KANDEL:

Q You say you know a man by the name of Jimmie Cox?

A He went by another exactly like it.

Q Yes. Did you have a conversation with Mr. Brook-[fol. 26] hart about Jimmie Cox and putting of the name Jimmie Cox as the payee on these checks?

A Not exactly, because he had a driver's license and identical name, Jimmie Cox.

Q Who is he that had the identical name?

A He is a boy we met while working in a carnival some place here in Ohio.

Q Did Mr. Brookhart ever have any identification of Jimmie Cox on his person?

A Yes, sir.

Q Did Mr. Brookhart to your knowledge, ever pass himself off as Jimmie Cox?

A Not especially. In the case of the checks I presume he passed himself off.

Q I will ask you, on your examination of State's Ex. "A", the name of Jimmie Cox on the back was written by Mr. Brookhart?

A I think it was, but I am not positive.

Q I will ask you have ever seen Mr. Brookhart's writing before?

A Yes, sir.

Q I will ask you if this is as you recall his writing?

A No, it is not exactly like his writing.

[fol. 27] Q When you made these checks out to Jimmie Cox was Jimmie Cox present?

A The real Jimmie Cox?

Q Yes.

A No.

Q To your knowledge was he ever present?

A No.

THE COURT: As I understand you now, you say . . . did I understand you to say the defendant here had possession of identifications of Jimmie Cox?

A Yes, he did.

THE COURT: What did the identification include?

A I know there was a driver's license and there was some other cards, but I am not sure what they were.

THE COURT: Do you know how the defendant obtained them?

A Yes, I do. Jimmie Cox gave them to him.

THE COURT: Coming back to this, the indictment, I will allow her testimony on it and take that under consideration. You object?

MR. ERGAZOS: OBJECT.

[fol. 28] THE COURT: If it isn't, of course, the signature isn't sufficient then, of course, as far as that is concerned the defendant could be reindicted if he wants to be, or the prosecutor I mean, so desires, but I will reserve the question on this objection at this time.

MR. KANDEL:

Q You stated, I believe, that you feel there were other checks in number possibly 20?

A Yes.

Q I have a copy of a check here which is marked State's Ex. "D", do you recall a check as No. 364, that you made out?

A I don't recall any of the numbers.

Q These checks you obtained and made out were they in sheets or were they individual checks?

A No, they were in sheets.

THE COURT: Has she identified the signature on that?

MR. KANDEL: Not as yet.

THE COURT: Exhibit "C".

[fol. 29] MR. KANDEL:

Q Going back to State's Ex. "C", did you write the name . . .

A Yes, sir.

Q . . . that is on the bottom of that check?

A Yes, sir.

Q And who put the name James Brookhart on there?

A I did.

Q Was James Brookhart present when the check was signed?

A Yes, sir.

Q Did he see you place the name of R. J. Buchannon on it?

A Yes, sir.

Q Who told you to place that name on there?

A Actually nobody gave it to me, nobody knew the treasurer's name so I thought up one.

Q I will ask you, was Mr. Brookhart present when this name was thought up?

A Yes, sir.

Q And was Mr. Mitchell present when that name was thought up?

A Yes, sir.

Q And at the time of the writing of all the checks, [fol. 30] the number you stated was written, was Mr. Brookhart and Mr. Mitchell present?

A Yes, sir.

Q Were they at all times during the writing of all these checks?

A Yes, sir.

Q Were they present during the time the conversation was held with you, that is, Mr. Mitchell present during the time the conversation was held concerning the breaking, or where they had gotten these checks?

A Well, yes, sir.

Q Now showing you the particular . . . State's Ex. "C", there is a signature there and purportedly James Brookhart's. Is that his signature?

A Yes, definitely.

Q That is Mr. Brookhart's signature?

A Yes, it is.

Q I will ask you whether or not during any of the travels you were present when Mr. Brookhart used the name of Jimmie Cox with this identification he had?

A Well, I don't know whether he signed it in motels and things, he might have signed that name, because [fol. 31] I never signed the register.

Q I will ask you if you recall at the time of making a check in the amount purported here on State's Ex. "D"?

A No, I don't recall making the check. I don't recall what the number was but I didn't make that check.

Q These writings on here are not your handwriting?

A No.

Q Now you tell us if you will please, whether these checks that you saw, when you first saw them? I believe you said they were in sheets, is that correct?

A Yes.

Q Do you recall how many were on a sheet?

A No, sir, I don't.

Q Do you recall whether the numbers were consecutive; that is, running one right after another, like torn out of a book, with the numbers running one right after another?

A Yes, sir.

Q And the lowest number we have here is what, as far as the number of the check?

A It would be this one.

Q And is that is State's Ex. "A", bearing number 361, is that right?

[fol. 32] A Yes, sir.

Q And the next lowest number then is what?

A This one.

Q You have placed them in order here numerically, showing State's Ex. "A", 361; State's Ex. "D", 364. Which is the copy of a check?

THE COURT: State's Ex. "B".

MR. KANDEL: "B", is 367.

THE COURT: All right, "C"?

MR. KANDEL:

Q And then State's Ex. "B", which is 367 on the check; and State's Ex. "C", which is 374.

THE COURT: State's Ex. "D"?

MR. KANDEL: Copy of a check, check 364.

THE COURT: Its testified here to "D".

MR. KANDEL: Its testified this is a copy of a check. She doesn't remember, this is not her writing, this is a copy of a check, it was in numerical sequence.

THE COURT: So there is no misunderstanding Exhibit "D", the original will be produced?

[fol. 33] MR. KANDEL: Yes, Your Honor.
THE COURT: All right.

MOTION FOR ADMISSION OF EXHIBITS
AND OBJECTIONS THERETO

MR. KANDEL: I believe that is all, you may inquire.
"A", "B", and "C", we move for their admission.

MR. ERGAZOS: We OBJECT to the admission of
"C".

THE COURT: That the court will take under considera-

tion.
MR. KANDEL: We move at this time to amend the indictment to show, indicate upon the face of the indictment "also known as James Brookhart, also known as Jimmie Cox, also known as . . ."

MR. ERGAZOS: OBJECT.

MR. KANDEL: "James Brookhart".

THE COURT: No, that would be overruled. Your motion, as I get it, your motion is intended to change count 5, from Jimmie Cox . . . "pay to the order" instead of Jimmie Cox, James Brookhart?

MR. KANDEL: No leave as to Jimmie Cox, change to James Brookhart also known as Jimmie Cox, but [fol. 34] adding in count 5 or in the heading of the indictment, either one, the identification "but also known as Jimmie Cox".

THE COURT: OVERRULED. You can't amend that, this check is made out, you can't change the check, it is made out to James Brookhart, you can't substitute any other name for that.

MR. ERGAZOS: Are you still sustaining my objection?

THE COURT: Yes, the motion would have to be amend the indictment to read instead of Jimmie Cox, instead of James Brookhart.

MR. KANDEL: I so move to amend that.

MR. ERGAZOS: OBJECT.

THE COURT: I will take it under consideration. Yes, we might have some law on that later.

(State's Ex. "E", marked)

MR. KANDEL: If it please the Court, Mildred Haag took a statement off of the other defendant, Ronald Mitchell and I believe there has been shown here a [fol. 35] spiracy which would permit this into evidence and I have it marked as State's Ex. "E". I have this and I have called Miss Haag to come in and testify as to her taking . . . I observe Mildred Haag's signature here at the bottom of the statement and I recognize this as her statement. I was also present at the time of taking the statement. Now . . .

THE COURT: Is Mildred Haag here?

MR. KANDEL: No, she is not.

THE COURT: Do you want to step into chambers and we will discuss this a moment.

MR. KANDEL: If the Court please, do you want me to identify under oath concerning taking of this statement or Mildred Haag. I was present.

THE COURT: You are offering . . .

MR. KANDEL: Yes, sir, I am offering the state-
ment of the co-conspirator.

[fol. 36] THE COURT: Are you objecting to it?

MR. ERGAZOS: I OBJECT to the introduction of State's Ex. "E", for the reason that the party giving the statement is in the Mansfield Reformatory and his whereabouts are known to the prosecution and it is possible for the prosecutor to produce that witness rather than introducing that statement.

THE COURT: But you are not denying the state-
ment.

MR. ERGAZOS: No we are not denying the state-
ment but we are objecting to the introduction of it
at this time.

THE COURT: OVERRULED.

MR. ERGAZOS: EXCEPTIONS.

MR. KANDEL: I wouldn't like to now, to introduce it, if the Court please, its been accepted into evidence?

THE COURT: Yes, it's been accepted.

[fol. 37] DALE RATLIFF, called to maintain the issue on behalf of the State of Ohio, being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION BY MR. KANDEL:

Q Will you tell us your name please?

A Dale Ratliff.

Q Mr. Ratliff, where do you live?

A 1802 - 49th St. N. W.

Q And what is your occupation?

A Manager, Redhead Oil Co.

Q Do you know a man by the name of James Brookhart?

A Yes, I do.

Q Do you see him in the courtroom?

A Yes, I do.

Q Point him out to the court please? Let the record show the witness pointed to the defendant and defendant waved to him acknowledging his identity. I will ask you if the defendant ever worked for you?

A Yes, he did.

Q During that time did he ever present a check purportedly made out to him and was cashed at your place of business?

A Not while he was working for us, no.

[fol. 38] Q Did he at a later date present a check that was cashed which later came back as a forgery or for some other reason?

A Thats correct.

Q Handing you State's Ex. "C", will you look at this, sir. Do you recognize that?

A Yes, I do.

Q I will ask you if this is the check that was cashed at your place of business?

A Yes.

Q And did Mr. Brookhart cash that check, sir?

A Yes, he did

Q Now how long did he work for you, Mr. Ratliff?

A I don't have the work records, I would say about six months.

Q During that time did you get to know Doris also?
A Yes.

Q And I will ask you how you got to know her?

A Well, she used to bring him to work and pick him up occasionally.

Q Did he ever have a conversation with you about her being his wife or living with her?

A I don't know whether he did or not. I just took for granted that she was.

[fol. 39] Q Your place of business is in Canton, Ohio, Stark County, is it not?

A Yes, sir.

MR. KANDEL: I believe that's all.

MARGARET DE GORDON, called to maintain the issue on behalf of the State of Ohio, being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION BY MR. KANDEL:

Q Will you state your name please?

A Margaret De Gordon.

Q Is that Mrs. De Gordon?

A Yes, it is.

Q Where do you live?

A 814 - 17th St., S., Massillon.

Q What is your occupation?

A Head cashier at Loblaw's.

Q Is that the store at 4438 West Tusc. St.?

A Yes, it is.

Q Going back to the year 1960, in October, were you their head cashier?

[fol. 40] A Yes, sir.

Q Was it your duty to check all . . .

THE COURT: What was that store?

MR. KANDEL: Loblaw's, 4428 West. Tusc.

Q . . . check all people that presented for cashing or . . .

A Yes.

Q . . . checks and things of that nature?

A Yes.

Q Showing you State's Ex. "B", I will ask you if this particular check passed through your hands?

A Yes, it did.

Q Do you know who passed that check to you?

A I think I do.

Q Do you see that person in the courtroom at the present time?

A Yes.

Q Will you point him out to the court if you see him?

A (pointing)

THE COURT: How is he dressed?

A Light blue shirt.

MR. KANDEL: Let the record show the witness identifies the defendant.

THE COURT: It may so show.

[fol. 41] MR. KANDEL:

Q On the back of State's Ex. "B", there is a name Jimmie Cox, and an address and license number, driver's license number and social security number and auto license number, the name Nash '58 and some initials, signature on the bottom. Will you tell me who put everything . . . put the name Jimmie Cox on there?

A I did.

Q And where did you get that information?

A From the papers he showed me and also from the card.

Q And this was a 1958 Nash automobile with license number P-1987-T, or J?

A That is a J.

Q And this information concerning the name Jimmie Cox and the man who claimed to be Jimmie Cox and gave you that information is the man you pointed out back here. Is that correct?

A Yes.

Q This place of business where you work is in Stark County, is it not?

A Yes, it is.

MR. KANDEL: Thank you, I have no further questions.

[fol. 42] RICHARD BARNHART, called to maintain the issue on behalf of the State of Ohio, being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION BY MR. KANDEL:

Q Will you state your name please?

A Richard Barnhart.

Q Mr. Barnhart, you are one of the deputy sheriffs of Stark County?

A Yes.

Q Going back to the 10th of October 1960, or thereabouts, were you connected with an investigation of a breaking and entering of the Beacon Box, Inc., in Perry Heights?

A Yes, sir, I was.

Q I will ask you, 151 Lennox, S. W., Perry Heights is in Stark County, Ohio?

A Yes, sir.

Q Tell us how entry was made?

A Entry was made into the building through a window on the west side of the building.

Q When you arrived did you find anything that was missing, to your knowledge?

A On the original contact there was a check writer [fol. 43] missing.

THE COURT: Going back to the window, what did you see, what did you notice?

A The window was not damaged in any way, but had been raised and then again lowered when they left. Now there are two business establishments in the same building and entry was made into more or less of a showroom; they went through that room to the Beacon Box office and door to that office was forced open.

THE COURT: By force, how do you mean?

A The door had been locked, to was jimmied or . . .

THE COURT: You saw it?

A Yes, sir.

MR. KANDEL:

Q Now, sir, after this did you talk to one Ronald Keith Mitchell?

A Sometime later, yes, sir.

Q And I will ask you if you were not present on February 3, 1961, when State's Ex. "E", was taken from Mr. Ronald Keith Mitchell?

A Yes, sir, I was present.

Q And I will ask you if during that time he mentioned a man by the name of James Brookhart? [fol. 44]

MR. ERGAZOS: OBJECT.

THE COURT: He, who?

MR. KANDEL: Mitchell.

THE COURT: Well, that has been admitted, SUSTAINED.

MR. KANDEL:

Q Have you talked to a man by the name of James Brookhart?

A Yes, sir.

Q Did you have a conversation with him relative to the breaking and entering of the Beacon Box Co.?

A Yes, sir, I talked to him about it.

Q What did he tell you?

A He denied any part of it, sir.

Q Did you question him about the forgery with which he was charged on the checks?

A Yes, sir, I talked to him in reference to this case.

Q What did he tell you?

A Stated at that time he did not wish to make a statement. He would wait until he could confer with an attorney.

Q Did he deny at that time deny forging these checks to you?

[fol. 45] A No, sir.

Q But he did deny breaking into this Company?

A Yes, sir.

Q Did you question him concerning the check writer that was missing?

A No, sir, I did not.

MR. KANDEL: I believe that's all.

JAMES A. BAILEY, called to maintain the issue on behalf of the State of Ohio, being first duly sworn by the Court, testified as follows:

DIRECT EXAMINATION BY MR. KANDEL:

Q Will you tell us your name, sir?

A James A. Bailey.

Q Mr. Bailey, where do you live?

A Mount Eaton.

Q And what is your occupation, sir?

A Presently, or then?

THE COURT: Then.

A I was president of the Beacon Box, Inc.

MR. KANDEL:

Q And where did you have your place of business, sir?

[fol. 46] A 151 Lennox Ave., in Perry Heights.

Q Who owned the building where that is located?

A R. & S. Enterprises.

THE COURT: Where is that located, what county?

A It is in Stark County.

MR. KANDEL:

Q Going back to about the 10th of October, 1960, did you go to your place of business on the morning of the 10th and observe anything about it different than what you had noticed earlier?

A I noticed the door between our part of the building and that occupied by Liberty Trailer had been damaged and forced open.

Q Was this a door that was locked at all times when you were not there?

A Yes, sir.

Q From the outside do you know how they got into the inside of the building?

A Apparently they came through a window in the Liberty Trailer part of the building.

Q But the door into your office was broken into, is that right?

A The door into our portion of the building, the door [fol. 47] to the office itself, was not locked.

Q Now, did you find anything missing?

A Yes, I noticed the check writer was missing and later on some of our pay roll checks.

Q Do you recall what numbers of the pay roll checks that were missing had on their face? By this, I mean the checks you had a specific number on each check, did you not?

A Yes.

Q I will ask you if you remember at this time the number of the checks that were missing?

A I believe there were 33 checks missing.

Q I will ask you if you were missing checks #348 through #382 out of this particular checkbook?

A That should have been looked up before I came in.

Q I will ask you if you gave such a report to the police, the numbers that were missing?

A Yes, I did.

Q And if the record reveals it was #348 through #382 that would be what you observed back on October of 1961?

A Thats right, that is what I reported to the deputy sheriffs.

[fol. 48] Q I am showing you State's Ex. "A", sir, check #361, I will ask you if you ever wrote such a check?

A No, sir.

Q Who was the treasurer of your company?

A I was also president and treasurer.

Q Who was the only one authorized to sign checks for your company?

A My signature was the only one authorized.

Q Do you know Ronald J. Mitchell?

A No, sir.

Q Had he anything to do with the Beacon Box, Inc.?

A No, sir.

Q Showing you State's Ex. "D", . . . incidently, on State's Ex. "A", do you know a Jimmie Cox?

A No.

Q Showing you State's Ex. "B", will you tell me whether you have ever seen that check before as in that condition, written out?

A I looked at one check when Mitchell was tried, this may have been the one, at least it may be the same one.

Q I will ask you if you made this check out, sir?

A No.

Q Did you sign the name of Buchanan on that check? [fol. 49] A No, sir.

Q Was anyone by that name authorized to sign check #367, which is State's Ex. "B"?

A No, sir.

Q Showing you State's Ex. "C", which is another check did you make that check out?

A No, sir.

Q Do you know a R. J. Buchannon?

A Heard of him since then.

Q Did you at that time know a James Brookhart?

A No, sir.

Q Did you write a check to James Brookhart?

A No, sir.

Q Did you owe any money to Mr. Brookhart?

A No, sir.

Q I will ask you if you made out State's Ex. "C", which is check #374?

A No, sir.

Q I will ask you whether or not more of the checks had come back, which have been destroyed by the bank, to your knowledge?

A You would have to check with the bank.

Q Showing you a copy of check #364, which is [fol. 50] marked State's Ex. "D", I will ask you if this is the same type of check that you had with the name of Beacon Box, Inc., the date and other pertinent data, including a check number on it, #364, did you have such a check in your possession prior to October 10, 1960?

A It appears the same as this one.

Q I will ask you if this #364 was also included in the checks that were missing, that you gave to the police, Numbers 348 through 382?

A It is included in that group.

THE COURT: I want to ask, do the other identifications appear on the printed forms on these exhibits "A", "B", "C" and "D"?

A Yes, sir, they are the same as the rest of my checks.

THE COURT: Can you say whether or not those were your checks?

A They are.

MR. KANDEL:

Q I will ask you if State's Ex. "D", is a copy of the blank checks, not as filled out, but as a blank check? [fol. 51] A As far as I can tell.

THE COURT: Does it appear to be the identical form?

A To me it appears to be.

MR. KANDEL:

Q Incidentally, do you know a man by the name of Ronald Mitchell?

A Yes, sir.

Q Did he formerly work for you?

A Yes, he did.

MR. KANDEL: I believe that's all.

MR. KANDEL: I would like at this time to recall Doris back to the stand.

MR. ERGAZOS: OBJECT, to the recall, Your Honor.

THE COURT: OVERRULED. I am not doing any of this Mr. Ergazos because of the waiver of a jury. In fact, if this were an attempt to rebuttal it would have to be limited to rebuttal, so I would allow you . . .

[fol. 52] DIRECT EXAMINATION OF
DORIS JONES BY MR. KANDEL:

MR. KANDEL:

Q When you were on the stand earlier I did not ask whether or not you know the kind of automobile that Mr. Brookhart had?

A Yes, I do.

Q What kind was it?

A Its a Nash, I am not sure about the year but it was one of the later Nash's, one of the latest models.

Q Did you know the license number of that automobile?

A Yes.

Q What was it?

A P-1987-J.

MR. KANDEL: I believe thats all.

(State's Ex. "F", marked)

MR. KANDEL: I have seen a piece of correspondence, if it please the Court, one written by the defendant James Brookhart, mailed to the office of the Prosecuting Attorney of Stark County, and a copy of the answer sent by Mr. Ira G. Turpin from our office, in reference to [fol. 53] this particular matter as an admission against him.

THE COURT: Have you seen it?

MR. ERGAZOS: I have seen them, we have no objection.

THE COURT: Are you offering it?

MR. KANDEL: Yes, Your Honor.

THE COURT: Then I will read it and see . . .

MR. KANDEL: If it please the Court, at this point I am waiting only for the check from Massillon to be brought over and rather than detain the court . . .

THE COURT: Yes, we can recess. You introduced this for what purpose?

MR. KANDEL: To show . . .

THE COURT: His incarceration?

MR. KANDEL: To show his attitude upon the charges placed against him here and can be accepted as admission against interest as far as this man is concerned.

THE COURT: Well, there is evidence in this case [fol. 54] already of flight. This indicates that he . . . if you are introducing it to substantiate flight, or if you are introducing it to support he is in a federal prison . . .

MR. KANDEL: I think there are several matters there you could go to. I think the wording is indicative of the fact he knows he is guilty of this as he makes an admission in this particular statement. He is requesting we do something to get rid of the charges against him even though . . .

THE COURT: Have you read between the lines? I find nothing here as an admission? The court could take . . . he states he learned his lesson, he never would be in trouble again, but he doesn't make any admission. No, objection SUSTAINED.

MR. ERGOZAS: We OBJECT, Your Honor, to a [fol. 55] continuance for the purpose of presenting further evidence. The Prosecutor's office notified me on Monday and Tuesday of this week . . .

THE COURT: That is true.

MR. ERGAZOS: And they had ample time to ascertain if this evidence was going to be available and we claim we are entitled to proceed immediately or terminate the trial at this point.

THE COURT: This witness is not obtainable and he has the check. If the court felt he had skipped in order not to testify why, I, of course, wouldn't continue it. Lets see, that is as . . .

MR. KANDEL: Yes, as to two counts.

THE COURT: No other witness testified as to "D" except Doris Jones.

MR. KANDEL: Yes, Your Honor, except only of the place of business.

THE COURT: Oh, yes, Bailey says it looked like it. [fol. 56] MR. KANDEL: And there was one check number in the series that was missing.

THE COURT: There has been no testimony as to the grand larceny count except that some checks . . . a check may have been . . . was taken.

MR. KANDEL: I would like to recall Mr. Barnhart.

THE COURT: Or the owner.

MR. KANDEL: The owner has left.

THE COURT: I couldn't accept this witness.

MR. KANDEL: As to his checking into the matter and finding out the value of it.

THE COURT: He can testify to the value but what was taken . . .

MR. KANDEL: The check writer, he testified to that was taken.

THE COURT: I am limiting you to the check writer.

DIRECT EXAMINATION OF R. BARNHART
BY MR. KANDEL:

Q Mr. Barnhart, I believe you testified that a check writer was missing, so did Mr. Bailey, the owner of the [fol. 57] business establishment. I will ask you if you made an investigation as to the condition of the check writer and the age of it and the approximate cost of this check writer and replacement of it?

A I did. I talked to Mr. Bailey in reference to the check writer. He did purchase it outright and he placed the value of it at \$90.00.

THE COURT: Now if there is an objection to that . . .

MR. ERGAZOS: OBJECT, Your Honor.

THE COURT: Then I will grant . . .

MR. ERGAZOS: It is hearsay.

THE COURT: SUSTAINED. I will give the prosecution time to bring the owner back. We will continue the case for that until 1:00 o'clock and then that will give you time to get the grand larceny check and I will talk over with the attorneys in chambers about this one and about this one, of Exhibit "C".

11:45 a.m.
RECESS

[fol. 58] 1:15 p.m.—COURT IN SESSION:

CONTD. DIRECT EXAMINATION OF
JAMES A. BAILEY BY MR. KANDEL:

Q You testified this morning about your place being broken into and a check writer being missing. What was the value of that check writer, sir?

A I valued it . . . I think at the time . . .

THE COURT: Not what you valued it.

MR. KANDEL:

Q What did you pay for it?

A Before I came back this time, the insurance company replaced it with an identical model and it still has the price tag on it, \$139.00 and some cents.

MR. ERGAZOS: OBJECT and ask that be stricken.

THE COURT: In your opinion then what was the value of it?

A To buy of the same vintage?

THE COURT: Its been used.

A I would say around \$90.00.

MR. KANDEL: At this time, if it please the court, move for the admission into evidence of State's Ex. "A".

THE COURT: First, the motion to amend the Exhibit "C" will be granted.

[fol. 59] The statute specifically allows an amendment before, during or after trial. Its been testified to this particular check was forged and its been testified to that the name, by the girl witness, that is James Brookhart's endorsement, so it of course, proves it was a forgery.

MR. ERGAZOS: EXCEPTIONS.

THE COURT: The endorsement even was a forgery.

MR. ERGAZOS: OBJECT.

THE COURT: And there is no question the check was passed.

MR. KANDEL: If it please the Court, I believe you stated the exhibit, I believe you mean the indictment.

MR. ERGAZOS: EXCEPTIONS.

THE COURT: The indictment as to the . . . I allowed the number to be changed, and the name may now be changed to . . . Jimmie Cox to James Brookhart.

MOTION FOR ADMISSION OF EXHIBITS AND OBJECTIONS

MR. KANDEL: If it please the court, we move for [fol. 60] the admission into evidence of State's Ex. "A", "B", "C", "D", and "E".

MR. ERGAZOS: I believe "E" had already been accepted over objections.

Defendant at this time OBJECTS to the introduction into evidence of those exhibits other than "E". We spe-

cifically OBJECT to Ex. "C" inasmuch as it is at variance with the indictment returned in this case and particularly considerable variance between the information contained in the check and that which is set forth in the copy of the indictment which had been served on this defendant.

THE COURT: The Court finds it isn't material nor is it prejudicial. The statute says as to the name and identification, there isn't any question that the name of the crime is forgery, and the identification of the check [fol. 61] has been testified to by several witnesses. The objection is OVERRULED as to Exs. "A", "B", & "C" and they may be received into evidence. The objection to the photostatic copy of State's Ex. "D", that is, the photostatic copy itself, SUSTAINED, and that count will be along with the count of forgery on that as well as the passing, will be SUSTAINED, and both counts will be dismissed.

MR. ERGAZOS: For the purpose of the record, it is my understanding it is specifically the 7th and 8th counts that are being dismissed, is that correct?

THE COURT: That is correct. The Court finds him not guilty on the 7th and 8th counts for failure of proof.

Anything further?

PLAINTIFF RESTS

MR. KANDEL: Nothing further from the State.

[fol. 62] MR. ERGAZOS: At this time, if the court please, the State having rested, the defendant moves for dismissal of counts one through six in Case No. 18139, and further moves for dismissal of both counts contained in the indictment returned in Case No. 18101, for the reason there has been a failure on the part of the State of Ohio to sustain the burden of proof as required in criminal cases.

FINDINGS OF THE COURT

THE COURT: OVERRULED. Now taking the indictment #18139, the count one, the court finds . . .

MR. KANDEL: If the court please, prior to the court findings, while the defendant has made his motion at this time the record doesn't reveal we rested our case.

THE COURT: I assume since he required a prima facie case only you have the opportunity now.

[fol. 63] MR. ERGAZOS: Nothing further from the defendant.

THE COURT: As to count one, the testimony clearly shows beyond a reasonable doubt the defendant is guilty of count one, and also of count two, uttering and publishing, that check. Count Three, the count based on Ex. "B", there isn't any question about the guilt of the defendant on that one, or on count four, the forgery of that check. The testimony is clear that all these checks were forged with defendant's knowledge and his presence at the time of the passing; the passing the court finds was done, some of them, by the defendant himself, and some by his co-defendant, a co-conspirator.

The Court finds the defendant guilty of . . . as charged in the indictment of #18139, except as to the 7th and 8th counts.

[fol. 64] Now coming to the indictment #18101 charging breaking and entering and grand larceny, there isn't any question there was a breaking and entering and the testimony of the co-conspirator Robert Mitchell, there isn't any question about his testimony which definitely makes the defendant present at the crime and guilty of that count. And as to all the evidence in this case the court finds the defendant is guilty of the second count of grand larceny. Besides this, in going to the question of guilt, of course, the court states on matters of law the statute allows such as flight, failure of the defendant to take the stand in his own defense, and all other matters that are legally competent to be considered.

MR. KANDEL: If the court please, as the court's [fol. 65] finding has now been entered in this case the State moves the court to pronounce sentence in this case on the defendant.

THE COURT: Defendant come forward.

Now, Mr. Brookhart, you have just heard the finding and decision of the court in finding you guilty on these charges the court has mentioned. Now, do you have anything to say why judgment should not be pronounced against you?

A Nothing, Your Honor.

MR. ERGAZOS: First, I have a statement or two before the court does pass sentence here. This defendant as the court noted there in the correspondence which the prosecutor presented to the court this morning, that this defendant did spend some time under a federal sentence, he spent time in Springfield Mental Hospital, a federal [fol. 66] institution, for a considerable period of time. I believe the majority of the time he was incarcerated under the federal statute, and he had asked to be returned to this jurisdiction to stand trial on these various matters. He was led to believe by the federal authorities that his time he was serving there would be considered in his state's cases. I realize the statements by the federal authorities are not binding on this court but I merely point this out to the court at this time.

THE COURT: You mean not binding even if the statements were made?

MR. ERGAZOS: I wasn't there, Your Honor.

That was the information that has come to me.

THE COURT: Yes, he committed these crimes here and he fled. He hadn't learned his lesson and got into further trouble.

[fol. 67] THE COURT: What was the trouble with the federal authorities?

MR. ERGAZOS: The Dyer Act. I might say to the court also, at the time of this occurrence in October of 1960 the defendant was taking benzedrine, he was drinking heavily, he actually has right along, he has had no recollection of these events there and by virtue of his hospitalization in a federal hospital he has helped himself and was hoping he could continue as such.

THE COURT: He may helped himself but his attitude in standing trial on these cases is nothing more than just taking a flier. He knew he was taking it, the court certainly knows he was just taking a flier, he never expected to be acquitted, something else is back of it.

There seems to be a rumor or understanding down in [fol. 68] the county jail or by one of the defendants, they haven't got a chance to get out of the pen or Mansfield, whichever one they are sentenced to, if they plead guilty, by that admission there is no chance whatever, but where they stand trial they still have a chance of another trial

and some court comes along and weakly, as the Supreme Court of the United States has done given the criminal more than he is entitled to under the law. The decision of the Supreme Court of the United States was five to four, showing the split of the Supreme Court. But be that as it may the defendant saw fit to stand trial and yet failed to take the witness stand, everything involved was an attitude of evading prosecution; his own letter that you spoke of, I can speak of now, that you re-[fol. 69] fered to, he wanted to evade prosecution, further prosecution on these charges.

SENTENCE PRONOUNCED

1:35 p.m.

[Reporter's Certificate to foregoing transcript
omitted in printing]

[fol. 70]

THE SUPREME COURT OF OHIO

JAMES BROOKHART, PETITIONER

v.

E. B. HASKINS, Supt. etc., RESPONDENT

CERTIFICATE

I, THOMAS L. STARTZMAN, CLERK OF THE SUPREME COURT OF THE STATE OF OHIO, do hereby certify that the attached transcript is the original transcript of proceeding of March 23, 1962, filed in this Court in the above-entitled case.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said SUPREME COURT OF OHIO this 3rd day of December, 1965

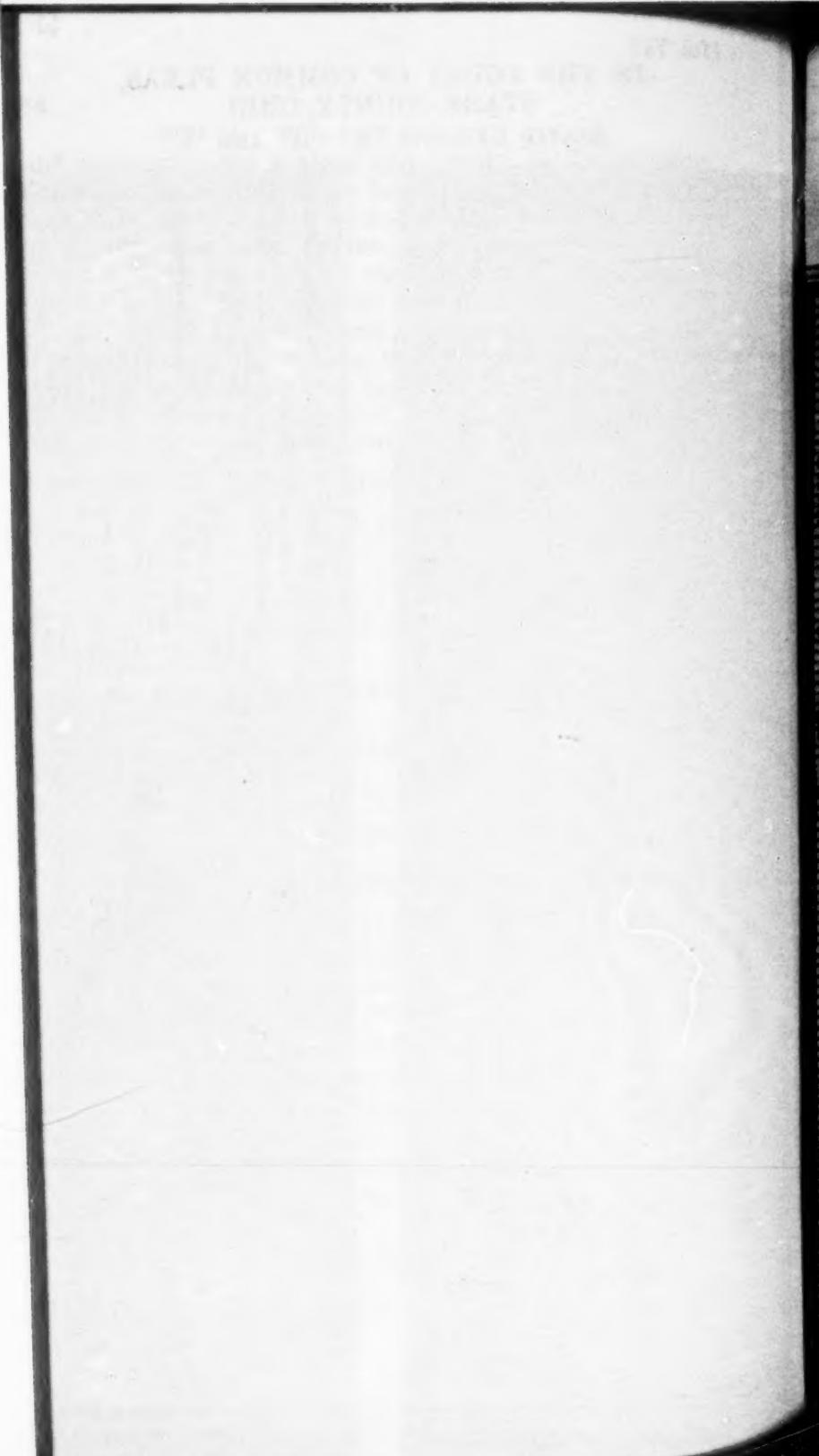
/s/ Thomas L. Startzman
Clerk, The Supreme Court of Ohio

[SEAL]

[fol. 71]

IN THE COURT OF COMMON PLEAS,
STARK COUNTY, OHIO
STATES EXHIBITS "A" "B" AND "C"





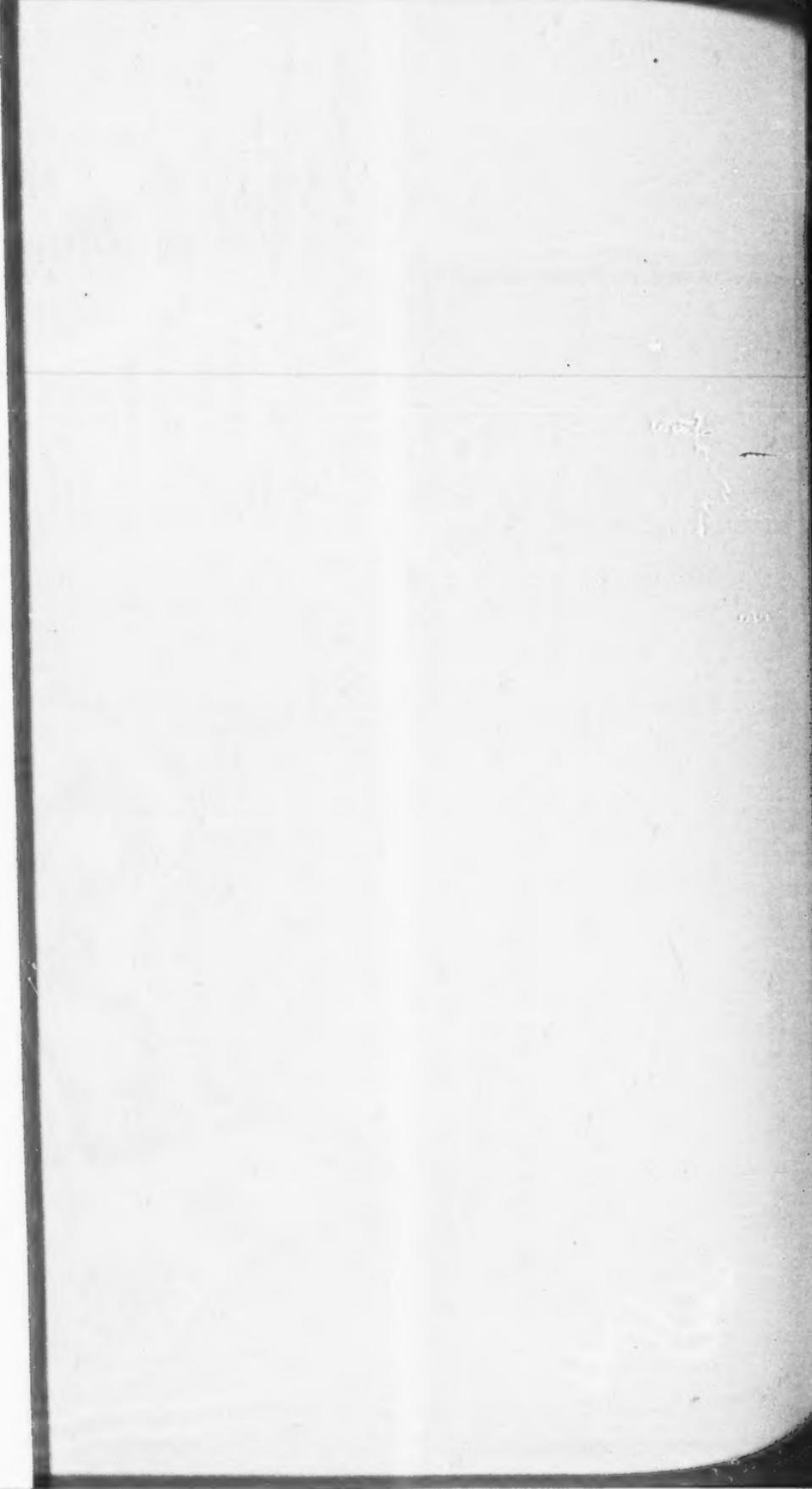
THE STATE BANK COMPANY, Massillon, Ohio

Returned for Recon Checked

1-1-1

ACCOUNT	<input type="checkbox"/> Attached <input type="checkbox"/> Cash <input type="checkbox"/> Drawn on uncollected funds <input type="checkbox"/> No account <input type="checkbox"/> Not Sufficient Funds <input type="checkbox"/> No funds <input checked="" type="checkbox"/> Payment stopped <input type="checkbox"/> Serv. acc. and std. to client	ENDORSEMENT	<input type="checkbox"/> Charging <input type="checkbox"/> Income <input type="checkbox"/> Investment <input type="checkbox"/> Merchandise <input type="checkbox"/> Other endorsement required
PAYER	<input type="checkbox"/> Name altered <input type="checkbox"/> Name initials	SIGNATURES	<input type="checkbox"/> Counter <input type="checkbox"/> Deposit <input type="checkbox"/> Income <input type="checkbox"/> Investment <input type="checkbox"/> Merchandise <input type="checkbox"/> MISCELLANEOUS <input type="checkbox"/> No authority to pay <input type="checkbox"/> Not negotiable <input type="checkbox"/> Not transferable <input type="checkbox"/> Not used <input type="checkbox"/> Must be received
AMOUNT	<input type="checkbox"/> Altered (Please guarantee) <input type="checkbox"/> Illegible	DATE	
VOUCHER	<input type="checkbox"/> Altered <input type="checkbox"/> Altered <input type="checkbox"/> Post dated		

7/17/1968
Dear State



THE STATE BANK COMPANY, Massillon, Ohio

Returned for Reason Checked

ACCOUNT	ENDORSEMENT
<input type="checkbox"/> Attached	<input type="checkbox"/> Checking account
<input type="checkbox"/> Closed	<input type="checkbox"/> Endorsed
<input type="checkbox"/> Drawn on unchartered bank	<input type="checkbox"/> Interbank
<input type="checkbox"/> No account	<input type="checkbox"/> Minus
<input type="checkbox"/> Not sufficient funds	<input type="checkbox"/> Official endorsement required
<input type="checkbox"/> No funds	
<input type="checkbox"/> Payment exceed	
<input type="checkbox"/> Sav. acc't not valid to draw	
AMOUNT	PAYER
<input type="checkbox"/> Altered (Name written)	<input type="checkbox"/> Name altered
<input type="checkbox"/> Illegible	<input type="checkbox"/> Name initials
DATE	SIGNATURE
<input type="checkbox"/> Altered	<input type="checkbox"/> Counter
<input type="checkbox"/> Minus	<input type="checkbox"/> Illegible
<input type="checkbox"/> Minus	<input type="checkbox"/> Incomplete
<input type="checkbox"/> Poor date	<input type="checkbox"/> Irregular
VOUCHER	<input type="checkbox"/> Missing
<input type="checkbox"/> Not signed	
<input type="checkbox"/> Missing	
	<input type="checkbox"/> Must be received
	MISCELLANEOUS
	<input type="checkbox"/> No authority to sign
	<input type="checkbox"/> Not negotiable
	<input type="checkbox"/> Not on us

[fol. 72]

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE'S EXHIBIT "E"

18101-139

STATE OF OHIO

VS

JAS. EDW. BROOKHART

3-23-62

GRAND JURY

CLASSIFIED
MATERIAL

STATEMENT
OF
RONALD KEITH MITCHELL,
TAKEN IN THE
PROSECUTOR'S OFFICE, CANTON, OHIO,
ON
FRIDAY 10:40 A.M., FEBRUARY 3, 1961.

[fol. 73]

GRAND JURY
STATEMENT
OF
RONALD KEITH MITCHELL,
TAKEN IN THE
PROSECUTOR'S OFFICE, CANTON, OHIO,
ON
FRIDAY 10:40 A.M., FEBRUARY 3rd, 1961.

CLASSIFIED
MATERIAL

APPEARANCES

HARRY KANDEL,
Assistant Prosecuting Attorney.

LEWIS NAPIER,
Investigator,
Sheriff's Department.

RICHARD BARNHART,
Investigator,
Sheriff's Department.

MILDRED I. HAAG,
Official Shorthand Reporter.

MR. KANDEL:

Mr. Mitchell, before we proceed with this statement I want to advise you that you have a right to be permitted to contact your attorney, if you desire to—to have his advice concerning whether or not you should give a statement. I will advise you further of the fact that if you give a statement and do so voluntarily, the facts and circumstances related therein can be used against you in

[fol. 74] a trial, and if you admit anything of a criminal nature, it can be used as evidence in any trial against you and it can be used against anyone else concerning matters which you talk about. Do you have an attorney?

A No.

Q Do you desire to get an attorney?

A No.

Q Do you desire to make the statement, knowing the fact that you are waiving your constitutional rights of testifying against yourself?

A Yes.

Q You understand that if you do give the statement, you are to be sworn to tell the truth and you could be charged with perjury if you lie in this statement. You understand that?

A Yes, sir.

Q Will you swear the witness?

WITNESS SWORN BY THE OFFICIAL SHORTHAND REPORTER

Q Your name is Ronald Keith Mitchell?

A Yes.

Q Where do you live, Mr. Mitchell?

A The last address here was 800 9th Street S. W., Canton.

Q Are you employed presently?

A No.

Q Are you married?

A No, divorced.

Q Divorced?

[fol. 75] A Yes.

Q Do you have any children?

A One.

Q Is your former wife and child living here in Stark County?

A No.

Q Where are they living?

A Miami, Florida.

Q How long have you been in Canton?

A One day.

Q Prior to your being here this one day today, how long had you been in Stark County?

A Since I was in the sixth grade, except when I went away awhile. We moved back and forth.

Q How old are you at the present time?

A Twenty-nine.

Q Going back to the 10th day of October, 1960, were you in Canton on that day?

A I think so.

Q To refresh your recollection, sir, this was the day that the Beacon Box, Inc., at Lennox Avenue S.W. in Perry Heights, Stark County, Ohio, was broken into. Were you here on that day?

A Yes, sir.

Q Where were you living at that time?

A At that same address—800 9th Street S. W.

Q Were you living there with anyone?

A No, just had a sleeping room.

[fol. 76] Q Did you know a man by the name of James E. Brookhart?

A Yes.

Q How long had you known him?

A I think a year or two before that.

Q Did you run around with Mr. Brookhart?

A We worked together some.

Q Do you know a woman by the name of Doris Brookhart?

A Yes.

Q Do you know her by any other name?

A Yes. Let's see—her other married name—let's see—what was that now? I don't know it—seemed like it was Smith or something. Jones.

Q Jones?

A Jones.

Q Doris Mae Jones, is that right?

A I am not sure about the middle name, but I think it was Jones.

Q How long have you known these people?

A I am not sure. I think it was a year or two before this.

Q Do you know where Doris Mae Jones or Doris Mae Brookhart is at the present time?

A No.

Q When was the last time you saw her?

A See, this happened on the 10th. I am just remembering, so—let's see—the next day—it took us one day to get there. 12th of October is the last I saw either one of them.

[fol. 77] Q And where was that?

A New York City—Jamaica, Long Island, New York.

Q Going back to the 10th of October, 1960, were you with Mr. Brookhart on that day?

A Yes.

Q About what time of the day did you first see him?

A That is hard to remember. Now, let's see now, I got to think here a minute. See, I was living then with them. They had this room on 3rd Street S. W. and they had this extra room and I rented it off of them. I can't remember if it was then. No, that was a little bit before that—that is right. That was a little bit before that, and then I got this other room, because I had trouble with the landlady, and I think I was living down there on 9th Street then.

Q Did you see Mr. Brookhart during the day of the 10th?

A Yes, we was together. I don't know exactly when we got together, but we were here going around looking for jobs—both looking for work at the time. I remembered that I worked out there before and I kept going back there, calling that guy up, two or three different times, and he said he would give me a job as soon as he had an opening, so I just kept checking with him on and off then.

Q On the 10th of October, did you go out to the Beacon Box, Inc. sometime during the business day?

A I could not say for sure we went out there together during the day. It probably was within a week of that [fol. 78] 10th, I imagine.

Q On the 10th of October, 1960, in the night time did you go out to this place?

A Yes.

Q About what time of the day was it?

A Let's see—it was—I think it was around 2:00 o'clock in the morning.

Q Would that have been on the 11th or the 10th?

A I am not sure. I don't know what day of the week it was. I can't remember. I know it was in the middle of the night when we went.

Q Who else went with you, if anyone?

A No one else.

Q How did you get there?

A His car.

Q What was your purpose for going there at 2:00 A. M. in the morning?

A He saw this check writer when we went out there that day. He was talking, telling me about how easy it is to cash these checks and he said, "You are not risking much. All you got to do is not go back to Canton and nobody else is going to be looking for you, accept the Canton police." And he said, "It is a minor charge." So he said, "That is the way for us to get some money." And I have been going down to Florida the last five years in a row now in the Winter time, and I just got away from Winter weather, actually the last ten years, [fol. 79] and I tried to go somewhere where it was warm in the Winter time.

Q You specifically went out with Mr. Brookhart to break into this place?

A Yes, to get this check writer. He said if we got that check writer, they are bound to have some checks there and we can—he could show me how to do it, he said—how to make them out.

Q How was entrance gained into this building?

A We walked around to the back and this window was open in the back, coming from Tuscarawas,—it was the first window in the back. It was open about two inches so we just pulled it the rest of the way open and walked in.

Q After you got in there where did you go?

A Then I noticed right away—see, this Beacon Box Company used to have this whole building, and I noticed right away there was some other company or something

in there, too, because that wasn't their equipment. So we just walked to the right then, because I didn't see any boxes there and I knew it evidently must be back on the right hand side.

Q Did you go into the office of the Beacon Box, Inc.?

A Yes.

Q When you got there did you find this check writer?

A Yes.

Q Did you find any blank checks?

[fol. 80] A Yes.

Q What did you do with the check writer?

A We took it.

Q How many checks did you take with you?

A I am not sure. We just took a bunch out of the middle of them. There was a whole—about that many—quite a few. There was quite a few, so I think we took around thirty—thirty some, I think.

Q After taking the checks and the check writer, did you do anything else in the building?

A No.

Q Did you go out the same way that you had come in?

A Yes.

Q After going out where did you go?

A They had this motel room out here off of 62 somewhere.

Q That was Doris and James Brookhart?

A Yes, and they had a little girl, too, with them.

Q Did you go to that motel?

A Yes, I went with them.

Q What did you do then?

A Then they put those checks in the check writer.

Q You say 'they' put them in?

A Yes.

Q Was Doris part of this?

A Yes, she signed the signatures—the name that—the man that was supposed to be paying the check.

Q That is R. J. Buchannon?

[fol. 81] A Yes, and Brookhart filled out—I mean put these checks in the check writer and filled out the amounts, and she signed that man's name.

Q Did she sign, also, the name of James Brookhart—payable to James Brookhart?

A They were both writing on them. I never filled out any of them, so they did all the writing that was on them. I guess she probably did some of that, too.

Q What was the reason for writing these checks, sir?

A We wanted to get some money to buy these—what they call joints for carnivals. That is tents and equipment to run those different games—it is tents. Just a word that is used—they call them joints—and we was going to go to Florida and put ourselves up in the carnival business and make our money that way.

Q How many checks did you see written here in Stark County?

A I don't know the exact number. I know it was—I cashed about—let's see—ten.

Q Here in Stark County?

A I would say approximately ten, yes, sir—checks—in Canton and Massillon.

Q Can you name the places where you cashed these checks, sir?

A I can't name them.

Q Well . . .

A Let's see—it was Loblaws over in Massillon, was one. Loblaws at the corner of Whipple and Tuscarawas [fol.82] was another one. Let's see—that is two, and Kroger's, I think, there at the Country Fair Shopping Center. I think that is one—that is three. Let's see now. Three is all I can remember. I know I did more than that. Let's see where else. If they had a list of those checks, I could tell you the ones I cashed. I could tell my handwriting on them.

Q Did you sign James Brookhart's name on any of these checks?

A No.

Q These were all made payable to you?

A No, to this idea—they had this Georgia's chauffeur's license—whatever name that was.

Q Was that Jimmy Cox?

A Yes.

Q I have got one check in the amount of \$52.82, payable to Jimmy Cox, purportedly signed by R. J. Buchanan. I will ask you if you passed that check, knowing it to be a forgery?

A No.

Q You did not pass that one?

A No, that is not mine.

Q Showing you another one payable to Jimmy Cox, \$57.58—the name of Jimmy Cox on the back of that one.

A No, that is not mine, either, I don't believe. Let me see that—yes, it might be. Yes, I think that one is mine.

Q That one is yours?

[fol. 83] A Yes.

Q Were you present when the others were cashed?

A No, I waited in the car. Just one of us went in.

Q Let me ask you, sir—was your procedure on cashing these checks that all three of you or the four of you, including the little girl, would go to a place and one of you would go in and cash a check and come out with the money? Is that the way you operated?

A No, Doris and the little girl stayed in the motel and me and Brookhart went and cashed most of them, except a few. When we were leaving Canton then he cashed about three or four other ones on the way to the Turnpike, and she was in the car, but before that it was just me and him did it.

Q Over how long a period of time did you cash the checks in the Canton or Stark County area?

A Just one day.

Q And all of these checks were in the amount of odd numbers, such as \$52.00, \$72.00, \$57.00?

A Yes, sir.

Q What was the total amount of money obtained by you and Mr. Brookhart and Doris Mae Brookhart in this manner?

A I think as far as I know—I mean the ones that they did and the ones that I did, before we got to New York—I don't know if he cashed any others—I heard that he did after that—but the ones I know about just here in Canton and on the way to the Turnpike was around—I be [fol. 84] lieve it was \$700.00 or \$800.00 total.

Q Did you split this money?

A No, sir.

Q Did you get any of the money?

A Yes. I got—first we were going to split it and then he said, "Well, whoever takes them in and cashes them—that way we each have to do the equal amount, but whichever ones I took in and cashed, I kept the money, and whichever ones he took in and cashed, he kept that money. So that is the way we did it.

Q I will ask you whether or not you recognize this photograph?

A Yes.

Q And who is that?

A James Brookhart.

Q And he is the man who was with you in the breaking and entering and also in the passing of these checks in the Stark County area?

A Yes, sir.

Q You say you left Mr. Brookhart in Jamaica, New York?

A Yes, sir.

Q Do you know where they were heading?

A Florida somewhere. They weren't sure which town—they said Florida.

Q After you left them in New York, I presume that Mr. Brookhart's wife and the little girl was along with him?

A They all left together.

[fol. 85] Q Where did they head, do you know?

A Florida.

Q What did you do?

A I stayed in New York and went to the race track and lost my portion of the money in about a week and a half, but I never saw them again.

Q And you were then picked up in Florida?

A In Atlanta.

Q Atlanta, Georgia?

A Yes.

Q Did you do any other breakings and enterings anywhere in Stark County while you were here?

A No, sir.

Q Have you ever been involved in any other criminal activity of any nature?

A No, sir, I have not—I sure have not.

Q This was your first venture in crime, sir?

A Yes, sir.

Q Do you know about whether Mr. Brookhart was involved in any other crimes?

A Not that I know of, except that he said he passed—cashed checks before, but I don't know where or how much or anything about it, and he just said—in fact, they both said they did that before, but I don't know where or anything else.

Q By both, do you refer to Doris Mae Brookhart?

A Yes, Doris.

[fol. 86] Q This little girl that was with them, was that Doris' daughter?

A Yes, but her other husband—ex-husband. I never knew him.

Q What was that child's name?

A Oh, I can picture her real plain, but I just can't—if I heard the name, I would know it, but I can't think of it.

Q Was her last name Smith?

A No, I think it was Jones.

Q Jones?

A The same as hers.

MR. NAPIER:

Q Did Doris dye her hair before she left Stark County?

A No, she didn't make any change in her appearance the last I saw her. She looked the same as always.

MR. KANDEL:

Anything else you boys know about?

MR. NAPIER:

We had heard she dyed her hair.

MR. BARNHART:

Did he give the name of the child?

MR. KANDEL:

No.

A If I think of it I will tell you.

MR. NAPIER:

A Sherry, it is?

A Yes, Sherry. I knew I would know it as soon as I
[fol. 87] MR. KANDEL:

Q Mr. Mitchell, is there anything else you want to tell us about your activities?

A Nothing, except what I told these men, and I don't know who it is up to, but I am perfectly willing—and my conscious almost demands it that even regardless if I got time, I want to be allowed, if they will give me a list of the ones—he told me that some of those people had to pay that money back themselves. I told them that—naturally none of this is right and I am sorry about it, but I would like to be able to pay those checks—pay those people back someday, if I get a job. Regardless of how much time I might serve before this, I would like to make some arrangements—I don't know how much I will make, but pay so much a week on them to at least get my conscience cleared up on it.

Q There is nothing else you want to add?

A No, except we took that check writer out there on Perry Road. I could probably show them where it was. I don't know—it has been all this time. I suppose it would be rusted, laying out in the weather. I think I could almost come close to showing them where it was that we threw it. Maybe they can get some value out of it.

Q Was this thrown away before you went to New York?

A Yes, as soon as we got done—they made all those checks out that night, and our idea was to bring that
[fol. 88] check writer and put it back in there. We didn't want it, but it was getting daylight by the time we came back from the motel to come back over towards Massillon, and we didn't want to take a chance being seen taking it back in, so we decided just to throw it away then.

Q It there is nothing else, will you sign those notes, please?

A Yes, sir.

RONALD K. MITCHELL

(Shorthand notes signed by the witness.

11:02 A.M.

The above and foregoing is a true and correct transcript of the statement taken from Ronald Keith Mitchell, in the Prosecutor's Office, Canton, Ohio, on Friday, 10:40 A.M., February 3, 1961, as shown by the stenographic notes taken at the time the said statement was being given.

/s/ Mildred I. Haag
Official Shorthand Reporter.

[fol. 89]

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No. 657

JAMES BROOKHART, PETITIONER

v.

STATE OF OHIO, RESPONDENT

STIPULATION

The parties to the above-entitled cause hereby stipulate that the attached documents are the originals of State's Exhibits A, B, C, and E, admitted into evidence in the proceeding conducted on March 23, 1962.

/s/ Lawrence Herman
Counsel for Petitioner

/s/ Leo J. Conway
Counsel for Respondent

[fol. 90]

IN THE SUPREME COURT OF OHIO

CASE NO. 39132

JAMES BROOKHART, PETITIONER

v.

E. B. HASKINS, Supt. etc., RESPONDENT

AGREED STATEMENT OF PROCEEDINGS BEFORE
THE BOARD OF MASTER COMMISSIONERS

It is hereby stipulated and agreed by and between counsel for the respective parties to the above-entitled cause that the following is an accurate description of the hearing conducted on November 24, 1964 before the Board of Master Commissioners:

No testimony was taken. Petitioner, in an unsworn statement, asserted the following three contentions: 1) That he had not been indicted upon the charges for which he was ultimately tried and that he had been denied adequate notice of the charges upon which he was tried; 2) that he had been denied his constitutional right of confrontation by reason of the introduction by the State of an alleged confession of a co-defendant; and 3) that he had been denied the right to cross-examine witnesses who testified against him.

The hearing before the Board of Master Commissioners was then adjourned to permit the Respondent to obtain the transcript of the trial of March 23, 1962. Thereafter, the hearing was resumed, and, in response to Petitioner's allegations, Respondent presented the documents attached to the Return to Writ and the transcript of the trial of [fol. 91] March 23, 1962 (Respondent's Exhibit No. 3). No witnesses testified in behalf of Respondent.

/s/ Lawrence Herman
Counsel for Petitioner

/s/ Leo J. Conway
Counsel for Respondent

2]

IN THE SUPREME COURT OF OHIO

CASE NO. 39132

JAMES BROOKHART, PETITIONER

v.

E. B. HASKINS, Supt. etc., RESPONDENT

CERTIFICATE OF APPROVAL TO AGREED STATEMENT OF
PROCEEDINGS BEFORE THE BOARD OF MASTER
COMMISSIONERS

, THOMAS L. STARTZMAN and WILBUR G.
, do hereby certify that we comprised the Board of
Commissioners in the above-entitled case. We do
certify as true and correct the agreed statement
proceedings before the Board of Master Commissioners
above-entitled case.

/s/ Thomas L. Startzman
THOMAS L. STARTZMAN

/s/ Wilbur G. Cory
WILBUR G. CORY

[fol. 93]

ORIGINAL**IN THE SUPREME COURT OF OHIO****No. 39132****JAMES E. BROOKHART, PETITIONER***v.***E. B. HASKINS, Supt., London Correctional Institution,
RESPONDENT**

[File Endorsement Omitted]

**REPORT OF MASTER COMMISSIONERS—Filed
November 30, 1964****FINDINGS OF FACT:**

This is an action in habeas corpus originating in this court. In March 1961, the Grand Jury of Stark County returned an indictment charging petitioner, James E. Brookhart, with four counts of forgery and four counts of uttering a forged instrument. A second indictment was returned charging petitioner with one count of breaking and entering into a business building in the night season with intent to steal property of value and one count of grand larceny. Petitioner pleaded not guilty and while represented by counsel waived in writing a trial by jury. The case was tried to the court March 23, 1961, on an agreement in which petitioner acquiesed in as shown by the record that the state need only prove a prima facie case and that there would be no cross-examination. After a presentation of the state's evidence the court found petitioner guilty of three counts of forgery, three counts of uttering a forged instrument, the one count of breaking and entering and the one count of grand larceny. He was sentenced to the Ohio Penitentiary on each count, the sentences to run concurrently.

CONCLUSIONS OF LAW:

It is petitioner's contention that he was not tried upon [fol. 94] an indictment returned by a grand jury but rather upon one returned by the prosecutor. During the course of the trial, upon motion by the prosecutor, the court permitted the indictment to be amended to conform to the evidence. These amendments consisted of corrections of the check numbers and amounts thereof on two of the checks set forth in the indictment and also the amendment of the name of the payee on one of the checks set forth in the indictment.

Section 2941.30, Revised Code, provides in part as follows:

"The court may at any time before, during, or after a trial amend the indictment, information, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged. * * *."

This section permits amendments to indictments which do not change the nature or identity of the offense.

The indictments presently before us were forgery and uttering a forged instrument. They are complete on their face and properly charged the offense in issue. An amendment to an indictment for forgery or uttering which merely changes the check numbers, amounts or the names of the payee as set forth in the indictment are matters of form, not substance and in no way affects the nature or identity of the offense as charged. Thus, such amendments relating to form and not substance were proper. *Dye v. Sacks, Warden*, 173 Ohio St., 422.

Next, petitioner contends he was denied due process because he was not confronted with his accusers and that his counsel was not permitted to cross-examine the witnesses. The circumstances of which petitioner now complains arose from his own acts. These proceedings are all [fol. 95] a matter of record in open court. An examination of the record shows that petitioner signed a written waiver of a jury and agreed to be tried to the court. It further shows that petitioner although he did not plead

guilty agreed that all the state had to prove was a prima facie case, that he would not contest it and that there would be no cross-examination of witnesses. This was acquiesced in by his counsel. In effect he said I won't plead guilty but if the state can prove a prima facie case, I won't contest it. It was analogous to a nolo contendere with an additional element requiring the state to prove a prima facie case. The state presented witnesses to prove the essential elements of the offenses charged on eight out of the ten counts upon which petitioner was charged.

It should be pointed out that the record shows that even after the jury waivers were executed and petitioner agreed to be tried on the basis of a prima facie case the court informed petitioner he could still have a full trial before a jury if he so desired and petitioner refused. Clearly no rights of petitioner were violated in the present case.

RECOMMENDATION: It is recommended that the writ be denied.

/s/ Wilbur G. Cory

/s/ Thomas L. Startzman

WGC:sa

[fol. 96]

IN THE SUPREME COURT OF OHIO

BROOKHART v. HASKINS, SUPT., LONDON CORRECTIONAL
INSTITUTION.

[Cite as Brookhart v. Haskins, Supt., 2 Ohio St. 2d 36.]

Habeas corpus—Amendments of indictment—Right to be confronted with accusers—Examination of witnesses—Nolo contendere or compromise between state and accused—Waiver of jury—Acquiescence of court—Proof of elements of offense—Accused represented by counsel—Constitutional rights of accused not violated.

No. 39132

OPINION—Decided March 31, 1965

IN HABEAS CORPUS.

This is an action in habeas corpus originating in this court. On March 1961, the Grand Jury of Stark County returned an indictment charging petitioner, James Brookhart, with four counts of forgery and four counts of uttering a forged instrument. A second indictment was returned charging petitioner with one count of breaking and entering a business building in the night season with intent to steal property of value and with one count of grand larceny. Petitioner pleaded not guilty and while represented by counsel waived in writing a trial by jury. This case was tried to the court on March 23, 1961, on an agreement, in which petitioner acquiesced as shown by the record, that the state need only prove a *prima facie* [fol. 97] case, and that there would be no cross-examination. After a presentation of the state's evidence, the court found petitioner guilty of three counts of forgery, three counts of uttering and forged instrument, the one count of breaking and entering and the one count of grand larceny. He was sentenced to the Ohio Penitentiary on each count, the sentences under the first indictment to run consecu-

tively, and the sentences under the second indictment to run concurrently with those imposed under the first indictment.

Mr. James Brookhart, in propria persona.

Mr. William B. Saxbe, attorney general, and Mr. William C. Baird, for respondent.

Per Curiam. It is petitioner's contention that he was not tried upon an indictment returned by a grand jury but rather upon one returned by the prosecutor. During the course of the trial, upon motion by the prosecutor, the court permitted the indictment to be amended to conform to the evidence. These amendments consisted of corrections of the check numbers and the amounts on two of the checks set forth in the indictment and also the correction of the name of the payee on one of the checks set forth in the indictment.

Section 2941.30, Revised Code, provides in part as follows:

"The court may at any time before, during, or after a trial amend the indictment, information, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged."

This section permits amendments to an indictment, which do not change the nature or identity of the offense.

The indictments presently before us were for forgery and uttering a forged instrument. They were complete on their face and properly charged the offense in issue. An amendment to an indictment for forgery or uttering, which merely changes the check numbers, amounts or the names of the payee as set forth in the indictment, is a matter of form, not of substance, and in no way affects the nature or identity of the offense as charged. Thus, such amendments relating to form and not substance are proper. *Dye v. Sacks, Warden*, 173 Ohio St. 422.

[fol. 98] Next, petitioner contends that he was denied due process because he was not confronted with his accusers nor was his counsel permitted to cross-examine the witnesses. The circumstances of which petitioner now

complains arose from his own acts with the advice and consent of his counsel. These proceedings are all a matter of record in open court. The record shows that petitioner, although he did not plead guilty, agreed that all the state had to prove was a *prima facie* case, that he would not contest it, and that there would be no cross-examination of witnesses. To this, his counsel acquiesced. In effect he said, "I won't plead guilty but if the state can prove a *prima facie* case, I won't contest it."

The record indicates the following in this respect:

"The Court: Ordinarily in a *prima facie* case—the *prima facie* case is where the defendant, not technically or legally, in effect admits his guilt and wants the state to prove it.

"Mr. Ergazos: That is correct.

"The Court: And the court knowing that and the prosecutor knowing that, instead of having a half dozen witnesses on one point they only have one because they understand there will be no contest.

"A. I would like to point out in no way am I pleading guilty to this charge.

"The Court: If you want to stand trial we will give you a jury trial.

"The Court: Make up your mind whether you require a *prima facie* case or a complete trial of it.

"Mr. Ergazos: *Prima facie*, Your Honor, is all we are interested in."

The procedure adopted here is similar to the plea of *nolo contendere* with an added condition that the state prove the *prima facie* case. This plea has never been either accepted or rejected in Ohio. It is urged that in view of the fact that pleas to an indictment are statutory, such a plea would not be acceptable in Ohio. This does not necessarily follow.

It has been pointed out that this ancient common-law plea is not in the strict sense a plea at all but rather a [fol. 99] compromise between the accused and the state. As is stated in *McNab v. State*, 42 Wyo. 396, 402, 295 P. 278:

"It is frequently said that the so-called plea of *nolo contendere* is not a plea in the strict sense of that term in criminal law. 16 C. J. 404; 8 R. C. L. 117. In early cases, it was treated as an implied confession, and more in the nature of a petition than a plea. *Hudson v. U. S.*, 272 U. S. 451, 454-455, 47 S. Ct. 127, 71 L. Ed. 347. In modern practice it is sometimes referred to as being in the nature of a compromise between the state and the defendant. *Young v. People*, 53 Colo. 251, 125 P. 117; *State v. La Rose*, 71 N. H. 435, 52 A. 943; *Tucker v. United States*, 196 F. 260, 116 C. C. A. 62, 41 L. R. A. (N. S.) 70. It is not one of the pleas which defendant can interpose as a matter of right, but is allowable only under leave of court. * * * See, also, 14 American Jurisprudence, 954, Criminal Law, Section 275.

The fact that the pleas which may be entered to an indictment are a matter of statute does not necessarily affect the right of a court to accept a plea of *nolo contendere*. In *McNab v. State*, *supra*, 403, it is said:

"We do not think the common-law recognition of the plea is inconsistent with the statutes of criminal procedure that fail to make specific provision for it. The use of the plea does not interfere with either the statutory rights of the defendant or the statutory authority of the court. The defendant still has the right to plead guilty or not guilty, if he so desires. The court may refuse to accept the plea and thus require a plea of guilty or not guilty. We are of opinion, therefore, that the plea of *nolo contendere* was a permissible plea in the case at bar. If it was not, it would perhaps be difficult to escape the conclusion that the contention that the judgment of the justice was unauthorized presents only a moot question. The defendant voluntarily and on the advice of counsel tendered the plea expecting to be fined and intending to pay the fine. * * *"

This plea is not a matter of right but one that requires the acquiescence of the court. Annotation, 89 A. L. R. 2d 540, 563.

The fact that the procedure here was unusual did not affect the validity of the proceedings, nor did it constitute a denial of a fair trial. Petitioner was afforded all of his

[fol. 100] constitutional rights. There is no question that petitioner could have pleaded guilty to these charges if he had so desired and been sentenced accordingly, or he could have pleaded not guilty and forced the state to put on every witness it had and fully contested them not only through cross-examination but also by presenting a defense. This he did not choose to do. However, petitioner chose a middle ground. In open court, while represented by counsel, petitioner agreed that, although he would not plead guilty, he would not contest the state's case or cross-examine its witnesses but would require only that the state prove each of the essential elements of the crime. Certainly, if an accused has the right to plead guilty and thus relieve the state from presenting any proof of his guilt, he can agree that although he will not plead guilty he is willing to accept the verdict of the court based on limited evidence on each of the essential elements of the crime, and that he will not contest such evidence. No presumption of guilt was created by such agreement. The state was required to prove all the essential elements of the offense. The court, from this evidence, then determined the guilt of the accused. That no presumption arose or was in the mind of the court is clearly exemplified by the fact that the court found petitioner not guilty on two of the counts with which he was charged. It is apparent from the record that the court, in spite of its own statement that petitioner in effect admitted his guilt, felt that the burden was on the state to prove a *prima facie* case that petitioner was guilty.

The fact that such *prima facie* case might have been shaken if petitioner had chosen to introduce evidence or even to cross-examine the state's witnesses did not affect the validity of the conviction. Petitioner voluntarily and while represented by counsel waived such rights.

The procedure followed was agreed to by petitioner in open court while represented by counsel. As was stated in the second paragraph of the syllabus in *State v. Robbins*, 176 Ohio St. 362:

"Agreements, waivers and stipulations made by persons accused of crimes, or by their counsel in their presence, during the course of a trial for crime, are, after the

[fol. 101] termination of the trial, as binding and enforceable upon such persons as like agreements, waivers and stipulations are upon parties to civil actions. (Paragraph four of the syllabus of *State, ex rel. Warner, v. Baer et al.*, *Judges*, 103 Ohio St. 585, approved and followed.)"

It should be pointed out that the record shows that, even after the jury waivers were executed and petitioner agreed to be tried on the basis of a *prima facie* case, the court informed petitioner that he could still have a full trial before a jury if he so desired, and petitioner refused.

A fair trial does not mean that an accused must exercise all those rights which have been held necessary to constitute a fair trial. An accused must be *afforded* such rights; he need not take advantage of them. Thus, an accused may or may not be represented by counsel, it is his own choice; he may cross-examine or he may not cross-examine witnesses; he may call or he may not call witnesses on his own behalf; he may be tried before or in the absence of a jury—all at his own choice. To constitute a fair trial it is necessary only that such rights be *available* to the accused, not that he take advantage of them.

In the instant situation, petitioner was represented by counsel. The transcript shows that twice during the preliminary proceedings petitioner was informed that he could have a complete trial before a jury if he so desired and twice it was indicated to the court that all the defense desired was that the state prove a *prima facie* case. Petitioner cannot contend now that he was denied a fair trial.

Petitioner remanded to custody.

TAFT, C. J., ZIMMERMAN, O'NEILL, SCHNEIDER and BROWN, JJ., concur.

MATTHIAS and HERBERT, JJ., dissent.

HERBERT, J., dissenting. Among the questions raised by the petitioner in his application for release by habeas corpus are:

"(4) Is it legal to put a prisoner on trial *prima facie* [sic]?

[fol. 102] "(5) Was this a fair trial?"

I believe that these questions should be answered in the negative.

Petitioner being indigent, the court appointed counsel pursuant to the provisions of Section 2941.50 of the Revised Code. The petitioner entered a plea of not guilty.

Upon advice of counsel, petitioner waived his right to trial by jury and agreed to be tried by the court.

Respondent contends that petitioner "agreed," upon advice of counsel, to stand convicted of the crimes charged in the indictments if the evidence established a "prima facie case" of guilt.

In respect to this phase of the proceedings the record discloses:

"The Court: * * * I understand you signed two waivers of trial by jury.

"A [Defendant]: Thats correct, Your Honor.

"* * *

"The Court: Let the record so show, and then let the record show that counsel for the defendant has agreed to try, for the court to try the indictment No. 18101 and 18139 in the same trial.

"* * * [defense counsel]: Thats correct, Your Honor.

"The Court: Anything further?

"* * * [Prosecutor]: Nothing further.

"* * * [defense counsel]: The only thing is, Your Honor, this matter is before the court on a prima facie case.

"The Court: There being no . . . going to be no cross-examination of the witnesses, so the court will know and the state can't be taken by surprise, *the court doesn't want to be fooled and have your client change his mind half way through the trial and really contest it*, the state has a contest, we want to know in fairness to them so they can put on complete proof.

"* * * [defense counsel]: I might say this, Your Honor, if there is any testimony adduced here this morning which leaves any question as to this defendant in connection with this crime I would like to reserve the right to cross-examine at that time.

[fol. 103] "The Court: That is raising another . . . that is putting the state on the spot and the court on the

spot, *I won't find him guilty if the evidence is substantial.*

"* * * [defense counsel]: We have a jury question in the court, undoubtedly there will be . . .

"The Court: Ordinarily in a *prima facie* case . . . the *prima facie* case is where the defendant, not technically or legally, in effect admits his guilt and wants the state to prove it.

"* * * [defense counsel]: *That is correct.*

"The Court: And the court knowing that and the prosecutor knowing that, instead of having a half a dozen witness [*sic*] on one point they only have one because they understand there will be no contest.

"A [Defendant]: *I would like to point out in no way am I pleading guilty to this charge.*

"The Court: If you want to stand trial we will give you a jury trial.

"A [Defendant]: I have been incarcerated now for the last eighteen months in the county jail.

"The Court: You don't get credit for that.

"A [Defendant]: For over two months my nerves have been . . . I couldn't stand it out there any longer, *I would like to be tried by this court.*

"The Court: Make up your mind whether you require a *prima facie* case or a complete trial of it.

"* * * [defense counsel]: Prima facie, Your Honor, is all we are interested in.

"The Court: All right." (Emphasis added.)

It cannot be doubted that the court accepted a special plea, this *prima facie* proof plea. Recognition of special pleas in criminal cases is denied both by statute and this court.

Section 2943.03, Revised Code, definitely specifies the pleas that may be entered:

"Pleas to an indictment or information are:

"(A) Guilty;

"(B) Not guilty;

"(C) A former judgment of conviction or acquittal of the offense;

[fol. 104] "(D) Once in jeopardy;

"(E) Not guilty by reason of insanity."

The majority opinion recognizes its vulnerability by reason of the intrusion of the special plea in the trial court and in defense of this procedural novelty likens it to the old common-law of *nolo contendere*. *Nolo contendere* is not a plea but merely a formal declaration by an accused person that he will not contest the charge. 22 Corpus Juris Secundum 1202, Criminal Law, Section 425 (1); annotation, 89 A. L. R. 2d 540 (1963).

The majority opinion relies heavily upon the case of *McNab v. State*, 42 Wyo. 396, where the court reluctantly approved the use of *nolo contendere* in one case without commending it for use in general practice. But why look to Wyoming when the statutes, *supra*, do not recognize special pleas, and this court, in *Richards v. State*, 110 Ohio St. 311, at page 313, spoke as follows:

"The criminal procedure of Ohio does not recognize a special plea of the character which was entered in this case, and it is clearly contemplated by the statutes that the plea must either be that of guilty or not guilty. This special plea must therefore be treated as either the one or the other. If it should be held that the special plea as entered does not admit the material allegations of the indictment, then it should be held to constitute a plea of not guilty. If on the other hand the material allegations of the indictment are not controverted by the special plea, then it must be held to amount to a plea of guilty of the offense charged." (Emphasis added.)

It was the duty of the trial court under the Ohio Constitution, statutes and the pronouncement of this court in the *Richards case* to have considered the special plea as one of not guilty and proceeded to try the cause. The majority opinion supports this conclusion when it says:

" * * although he did not plead guilty * * *."* (Emphasis added.)

The only plea that the trial court could properly consider was one of not guilty. The cause should have proceeded upon such a plea which clothed the petitioner with the presumption of innocence, which remained with him until his guilt was proved beyond a reasonable doubt. Section 2945.04, Revised Code.

[fol. 105] Both the trial court and defense counsel considered the petitioner guilty before the hearing commenced, as is evidenced by the record, in this language:

"The Court: * * * the prima facie case is where the defendant, not technically or legally, in effect admits his guilt and wants the state to prove it.

"* * * [defense counsel]: That is correct."

City of Cleveland v. Keah, 157 Ohio St. 331, in the second paragraph of the syllabus, takes issue with the trial court's conception of a prima facie case, when it states this principle of law:

"A prima facie case is one in which the evidence is sufficient to support but not to compel a certain conclusion and does no more than furnish evidence to be considered and weighed but not necessarily to be accepted by the trier of the facts." The trial judge eliminated from his mind any thought of acquittal or any presumption of innocence. This is but an example of the confusion and injustice certain to follow in Ohio under the majority opinion which opens the door to any type of special plea that a trial court may accept. The trial court during the proceedings also said:

"* * * I won't find him guilty if the evidence is substantial."

It appears that the judge was of the opinion that he would not be required to return a verdict of acquittal unless the petitioner produced substantial evidence of innocence.

It appears reasonable to conclude that the trial court considered the defendant guilty before the beginning of the proceedings as is evidenced by its language that:

"* * * the prime facie case is where the defendant, not technically or legally, in effect admits his guilt and wants the state to prove it."

Also, after finding the defendant guilty of the charges, the trial court stated as follows:

"The Court: * * * his attitude in standing trial on these cases is nothing more than just taking a flier. He knew he was taking it, the court certainly knows he was

just taking a flier, he never expected to be acquitted * * *."

[fol. 106] It is claimed in the majority opinion that:

"The procedure followed was agreed to by petitioner in open court while represented by counsel." On the contrary, the record transcribed by the "official shorthand reporter" discloses that the petitioner in open court, addressing the court, said:

"I would like to point out in no way am I pleading guilty to this charge."

His counsel:

"Prima facie, Your Honor, is all we are interested in."

It is reasonable to conclude that the petitioner correctly interpreted the colloquy between the court and counsel that *prima facie* proof was an admission of guilt on his part and he protested vigorously against such proceedings. In fact, following that protest petitioner stated: "I would like to be tried by this court."

Since petitioner did not acquiesce in the statement of his counsel to the court, the question arises as to who has the final control over decisions of a defense, when the defendant is present in court and understands the circumstances from which he draws his conclusions. It is our belief that under such circumstances the decision of the defendant is conclusive.

It appears to the writer of this dissent, however, that a far graver question arises from the apparent coercion and duress visited upon the petitioner by the state. Again we refer to the record:

"A [Defendant]: I would like to point out in no way am I pleading guilty to this charge."

"The Court: If you want to stand trial we will give you a jury trial."

"A [Defendant]: I have been incarcerated now for the last eighteen months in the county jail."

"The Court: You don't get credit for that."

"A [Defendant]: For over two months my nerves have been . . . I couldn't stand it out there any longer, I would like to be tried by this court." (Emphasis added.)

It appears further that the petitioner had been an inmate of a mental institution. He was held in jail without trial for 18 months and was denied a trial during all that [fol. 107] period until in desperation he said to the court, "I couldn't stand it out there any longer."

We do not believe that justice requires such treatment of indigents who are held in jail. Their cases should be disposed of at the earliest opportunity, but for some reason, which we do not know, this man, contrary to the provisions of the federal and state Constitutions, was denied a speedy public trial, with the result that even under those circumstances he insists that he does not plead guilty, declares that he will not make any admissions of guilty, and the court refuses to follow the procedure required when the defendant stands on a plea of not guilty.

The Constitution of Ohio, in the Bill of Rights, provides in Section 10, Article I, that:

"* * * in any trial, in any court, the party accused shall be allowed * * * a speedy public trial * * *."

In the Sixth Amendment to the federal Constitution, it is declared that:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial * * *."

The proceedings involved in the case at bar were not authorized by the law of Ohio, nor did the court have jurisdiction to pronounce sentence upon the petitioner. Consequently his imprisonment is illegal and contrary to law and he is deprived of his liberty without due process of law. The court should order the petitioner released from custody.

MATTHIAS, J., concurs in the foregoing dissenting opinion.

[fol. 108]

IN THE SUPREME COURT OF OHIO
January Term 1964

Case No. 39132

JAMES BROOKHART, PETITIONER

v.

E. B. HASKINS, SUPT. ETC., RESPONDENT

In Habeas Corpus

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DOCKET ENTRIES

Date	Memoranda of Pleadings, Etc., Filed, Writs Issued Etc., Judgments, Orders and Decrees
September 23, 1964	Petition (18) for a Writ of Habeas Corpus and certificate of service filed.
October 13, 1964	Return of Writ and certificate of service filed.
November 24, 1964	Hearing before the Master Commissioners.
November 30, 1964	Report of Master Commissioners filed and copies issued to Petitioner and Attorney General.
December 23, 1964	Petitioner's exceptions to report of Master Commissioners filed.
[fol. 109]	
March 31, 1965	Petitioner remanded to custody.
October 18, 1965	Entry of United States Supreme Court granting Certiorari filed.

[fol. 110]

IN THE SUPREME COURT OF OHIO

Case No. 39132

BROOKHART

v.

HASKINS, SUPT.

JUDGMENT—March 31, 1965

In Habeas Corpus

This cause was considered by the Court on the petition, return of writ, report of master commissioners and petitioner's exceptions. On consideration whereof, it is ordered by the Court that, for the reasons set forth in the opinion rendered in this case, the petitioner is hereby remanded to custody.

[fol. 111]

[Clerk's Certificate to foregoing transcript omitted in printing]

[fol. 112]

SUPREME COURT OF THE UNITED STATES
October Term, 1965

No. 99 Misc.

JAMES BROOKHART, PETITIONER

v.

OHIO

On petition for writ of Certiorari to the Supreme Court of the State of Ohio.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—October 11, 1965

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 657 and placed on the summary calendar.